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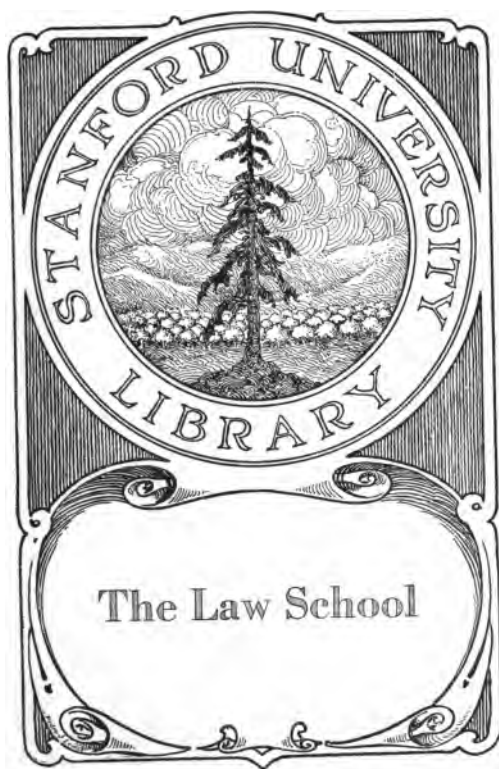
OF THE

Southern New Hampshire
Bar Association.

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PROCEEDINGS
OF THE
SOUTHERN NEW HAMPSHIRE
BAR ASSOCIATION,

AT ITS
EIGHTH ANNUAL MEETING

HELD AT
CONCORD, N. H., MARCH 16, 1899.

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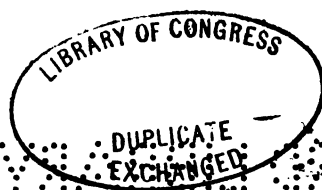


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PUBLICATIONS

OF THE

Southern New Hampshire Bar Association.

VOLUME TWO - - - PART FOUR.

OFFICERS AND COMMITTEES.

OFFICERS AND COMMITTEES
OF THE
SOUTHERN NEW HAMPSHIRE BAR ASSOCIATION,
FOR THE YEAR 1899.

OFFICERS.

President—LEWIS W. CLARK, of Manchester.

First Vice-president—HENRY B. ATHERTON, of Nashua.

Second Vice-president—ALBERT S. WAIT, of Newport.

Secretary and Treasurer—ARTHUR H. CHASE, of Concord.

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Thomas D. Luce, Nashua; Amos J. Shurtleff, Concord; Charles H. Knight, Exeter; John McCrillis, Newport; Fremont E. Shurtleff, Concord.

On Remedial Procedure.

John S. H. Frink, Portsmouth; Charles H. Burns, Nashua; Ira Colby, Claremont; John E. Young, Exeter; Albert O. Brown, Manchester; David A. Taggart, Manchester; Leslie P. Snow, Rochester.

On the Literature of the Law; or Imprints in Legal Interests.

George B. French, Nashua; Edward C. Niles, Concord; F. C. Faulkner, Keene; C. H. Hersey, Keene; Frank C. Livingston, Manchester; E. J. Smart, Rochester; George E. Bales, Wilton.

On Professional Deportment.

David Cross, Manchester; Stephen S. Jewett, Laconia; William F. Russell, Somersworth; Calvin Page, Portsmouth.

EIGHTH ANNUAL MEETING.

NOTICE OF THE EIGHTH ANNUAL MEETING.

CONCORD, N. H., March 8, 1899.

You are cordially invited to attend the eighth annual meeting of the Southern New Hampshire Bar Association, to be held at the supreme court-room in the State Library building, in this city, on Thursday, March 16, 1899, at 2:30 o'clock p. m.

PROGRAMME.

President's Address, Lewis W. Clark, of Manchester.

Annual Address, Joseph W. Symonds, of Portland, Me.

Short Addresses and Biographies.

Reports of Committees.

Consideration of the question of merging the association in the Bar Association of the State of New Hampshire, a corporation organized under the laws of the state.

Election of officers.

The annual banquet will be held at 7:30 p. m. at the New Eagle hotel.

The literary programme ensures an especially interesting meeting, and the business to be transacted will make it one of the most important meetings of the association ever held. Every member of the profession in this state is earnestly urged to be present and lend his aid to the movement for a state association. As this meeting comes on the day preceding the adjourned law term, lawyers can come to Concord Thursday noon, be present at this meeting and at the law term, and return home Friday afternoon. The secretary will be pleased to make arrangements for rooms at the hotel for Thursday night, for those who so desire.

F. C. FAULKNER,
DAVID A. TAGGART,
HENRY W. STEVENS,
LEWIS W. CLARK,
ARTHUR H. CHASE,

Executive Committee.

EIGHTH ANNUAL MEETING.

BUSINESS.

The eighth annual meeting of the Southern New Hampshire Bar Association was held in the supreme court-room at the State Library building in Concord, on the 16th day of March, 1899, in accordance with the foregoing notice. Attendance, 86.

The question of forming a state bar association under the charter of the Bar Association of the State of New Hampshire, was referred to a committee of three, consisting of David Cross, J. S. H. Frink, and Hosea W. Parker, and they were instructed to report at an adjourned meeting to be held on the first Tuesday of June, 1899, at 1:30 o'clock p. m.

The old board of officers were reappointed for the ensuing year as per list on pages, *supra*.



LEWIS W. CLARK.

PRESIDENT'S ADDRESS.

BY LEWIS W. CLARK, OF MANCHESTER.

Brethren of the Bar:

We are come to the annual gathering of our Association as in former years. We meet to renew acquaintances. We look in each other's faces and remember the occurrences of the past, and memory revives the incidents of other days. We meet as we have met before, acting under similar influences, observing and enjoying the meeting of the Southern Bar Association. It resembles former ones but it is not the same. It is a gathering of lawyers like other meetings of the Association and bears a general resemblance to them. But time makes an impression upon us all. The old and the young move along with equal pace and every year changes our position. The circumstances around us are different and our social and business relations are not the same as at our last meeting. We miss to-day Joshua G. Hall of Dover, Chief Justice Carpenter, Judge Isaac W. Smith, and other brethren who have met with us for the last time. The summons which is never unheeded has come to them and they are gone from the number of the living. We shall go to them but they will not return to us.

The changes constantly occurring become more marked with increasing years. The practice of the law is not the same as it was forty-five years ago. When I was admitted to practice in September, 1852, I looked forward with some degree of anxiety as to my success in the profession which

I had entered, hoping and expecting to be able to overcome the obstacles I might encounter and with a fair degree of application and labor attain a respectable position as a member of the bar. I remember my first jury trial in Belknap county forty-five years ago. It was an action brought by another attorney, and my client was not able to be present at the trial. I remember the interest I felt in the case. I remember how uneasy my sleep was during the night the case was before the jury. I was familiar with the facts as they were represented to me and I tried the case fairly well, but the verdict of the jury was against me. The opposing counsel was James Bell, the leading lawyer in Belknap county and that section of the state, and it appeared on the trial that my principal witness had a reputation for truth that was known to a majority of the jury and the opposing counsel as well, and when the trial was over I was satisfied that the verdict was right.

The practice of the law in New Hampshire fifty years ago was different from what it is at the present time. Centres of population and business have changed. There are places that supported two or three lawyers half a century ago and furnished them a thriving business, that offer no inducements to one at the present time. Cases involving the title to real estate were common, and a right of jury trial existed in all cases where the amount claimed in damages exceeded thirteen dollars and thirty-three cents, and in many cases tried the amount in controversy was less than that. The amount of damages involved did not affect the length of the trial. Questions of law arose whether one dollar or one thousand were claimed in damages. There was great controversy over the admissibility of evidence. There seemed to be an effort to try the case on as few facts as possible and much was excluded that would now be admitted without objection.

The majority of the men who constituted the bar of New Hampshire when I first knew it and became a member of it

are not with us to-day. In Rockingham county there were in practice at Exeter John S. Wells, Charles H. Bell, Judge W. W. Stickney, Amos Tuck, and Gen. Gilman Marston; and at Portsmouth, James W. Emery, W. H. Y. Hackett, William H. Hackett, and Albert R. Hatch. In Hillsborough there were at Nashua Charles G. Atherton, Judges George Y. and Aaron W. Sawyer, and Gen. A. F. Stevens, and at Manchester Judge Samuel D. Bell and Samuel N. Bell, Judge Daniel Clark, William C. Clarke, George W. Morrison, Judge Clinton W. Stanley, and James U. Parker. In Strafford there were Daniel M. Christie, John P. Hale, Judge C. H. Woodman, Samuel M. Wheeler, Frank Hobbs, Nathaniel Wells, W. J. Copeland, and Chief Justice Charles Doe. In Carroll Josiah Hobbs of Wakefield, Sanborn B. Carter and Col. S. D. Quarles of Ossipee, Samuel Emerson of Moultonborough, Obed Hall of Tamworth, and Joel Eastman of Conway. There were in Belknap county James Bell, Col. Thomas J. Whipple, Col. George W. Stevens, Stephen C. Lyford, and Judge Ira A. Eastman. Merrimack county had Judge Ira Perley, Gen. Franklin Pierce, Moses Norris, Austin F. Pike, Col. John H. George, Col. M. W. Tappan, Judge Asa Fowler, Judge George W. Nesmith, Judge William H. Bartlett, and Judge William L. Foster. In Cheshire county there were Gen. James Wilson, Levi Chamberlain, William P. Wheeler, and F. A. Faulkner. In Sullivan county there were Chief Justice John J. Gilchrist, Henry Hubbard, Edmund Burke, and Chief Justice Edmund L. Cushing. In Grafton county, Josiah Quincy, Judge Kittredge, Harry Hibbard, Chief Justice Henry A. Bellows, Chief Justice Andrew S. Woods, Chief Justice J. E. Sargent, Judge George A. Bingham, Judge Charles R. Morrison, Chief Justice A. P. Carpenter, Charles Rand, and Judge Edward D. Rand; and in Coös there were Hiram A. Fletcher, William Heywood, Ossian Ray, Judge William S. Ladd, and Jacob Benton.

Many of these names are known to a majority of the

members present only by reputation. They with their associates constituted the bar of New Hampshire for the last fifty years. They shaped its character, performed its duties, and maintained its reputation as an honorable profession. There were able and learned lawyers among them. They were men of influence in the community, of large experience and sound judgment, strengthened by a thorough knowledge of the law. They were practical men, accustomed to consider the evidence on all sides before coming to a conclusion and forming a judgment.

The growth and development of railroads, the progress of science and the discoveries and practical application of electricity to the business of life, has wrought great changes in the practice of the law. In the management and control of steam and electricity as a motive power skill and experience are required, and accidents will happen notwithstanding the exercise of the greatest prudence and caution. Cases are constantly arising involving questions of negligence and want of care which were formerly of rare occurrence. The changes and increase in the carrying of freight and passengers has increased the controversies relating to life and property, and questions arise as to the sufficiency of the railroad, its cars, tracks, and locomotives, whether properly managed and whether proper care was exercised by the person injured. These cases are not likely to grow less.

The question arises as to the standing of the bar in comparison with its former rank. As a matter of fact the bar of New Hampshire is as well qualified for its work as it ever was. The changes that have taken place are improvements that will not be reversed. The standard of admission to the practice of the law requires studious and patient application for three years as a preparation for the substantial examination which precedes the entry into professional life. Some knowledge of the law is necessary now to secure admission to practice. The present system

has been in force for twenty years and the general standing of the bar is evidence of the benefit derived from it. The standard ought not to be lowered. It protects the public from ignorance and inefficiency and tends to maintain the honor and dignity of the profession. The profession of the law is as honorable and the influence of the bar as commanding as it has ever been in New Hampshire.

As we look over the members of the legal profession we may not discover any one who is preëminent above others because of his profound knowledge of the law and skill in the management and trial of causes. Such cases do not often happen among living men. Reputations are not hastily established. Many are regarded as good lawyers, rank among the leaders in the profession, and maintain an honorable position in society, but their station in life can only be determined at its end. When the life-work is completed the judgment of the community assigns to each one his place.

I congratulate especially the young men that they are members of an honorable profession. The objects of our Association are declared to be, "To promote the honor and dignity of the bar, and good fellowship among its members ; to elevate its standard in the public confidence, with a view of producing and exercising such an influence in the community as may properly come from the members of the legal profession ; to secure the uniformity, consistency, and integrity of the laws of the state, written and unwritten, in connection with the intellectual, social, and physical enjoyments of its members and their families." Let it be the ambition of everyone to promote these objects by a life of honesty, industry, and fidelity.

BIOGRAPHIES.

BIOGRAPHIES.

1

ALONZO P. CARPENTER.

BY EDGAR ALDRICH, OF LITTLETON.

Mr. President, The Honorable the Justices of the Supreme Court, and Gentlemen of the Association :

I shall ask your attention this afternoon to some thoughts upon the life and character of the late Chief Justice Carpenter.

It is a matter of personal grief with me—and the burden of this grief will, I know, be lightened by the fact that all the members of this Association will share with me in carrying it—that the life-long friend, the venerable Harry Bingham, who was first invited by this Association to pay tribute of thought and word to the memory of Judge Carpenter, is not here for that purpose. Above all others, he was in our minds as the one, by observation, experience, and appreciation, best fitted to place proper estimate upon Alonzo P. Carpenter as lawyer and judge. Advancing years seem to admonish him that he ought not to undertake what all believe he could still do more acceptably than any among the living.

The warm tributes from the hearts of prominent members of the bar of the state, offered in the presence of the full bench, in Concord, a few days after the death of Chief Justice Carpenter, constitute a fitting monument, and fully and most properly commemorate the successful professional and judicial career of a justly eminent lawyer and judge.* It is not possible to build for any man a nobler monument than that builded by the friends and late associates of the deceased, in the presence of death. What greater tribute

* Published in Proceedings of the Southern New Hampshire Bar Association, 1898.

of appreciation can there be, than that which comes direct from the minds and hearts of those who stand in the presence of sudden and what seems irreparable loss? One who has read the spontaneous expressions on that occasion, naturally enough, shrinks from the effort of further memorial tribute, as involving danger that the richly adorned and perfectly finished structure may be marred, rather than improved, by any attempt to retouch the masterpiece, complete in its perfect symmetry, as it passed from the hands of artists whose hearts appointed them for the work.

Standing in the presence of this danger, my effort will be, and quite likely should be, to present something more in the nature of a biographical sketch of Judge Carpenter than is contained in the expressions to which I have referred. Then again, a memorial should be conscientiously fitted, in a certain degree at least, to the tastes of the person whose memory is sought to be perpetuated. Judge Carpenter was a man who believed in brevity of speech. His expressions at the bar and in his opinions were rare samples of terseness and brevity. He especially believed in brevity of tribute; and a long, fulsome, and wordy encomium would have been distasteful to him in life. An extravagant eulogy would, I believe, make him restless in his grave.

Alonzo P. Carpenter was born at Waterford, in Vermont, on the 28th day of January, 1829. He was descended from English ancestry, who settled in Massachusetts. His father was Isaiah Carpenter, a successful Vermont farmer of sturdy habits, and a pillar of the Congregational church. His mother was Caroline Bugbee. Her father was Amos Bugbee, and her mother's maiden name was Martha Woodward. The Bugbees came from Connecticut to Vermont. Judge Carpenter fitted for college at the St. Johnsbury (Vt.) academy; he graduated from Williams College in 1849; received the degree of LL. D. from his Alma Mater in 1889, and Dartmouth College conferred upon him the same

degree in 1896. He pursued the study of law at Bath, in New Hampshire, in the office of Chief Justice Woods and the firm of I. & S. H. Goodall. His legal education began in 1850, and he was admitted to the bar at the trial term, at Haverhill, in the county of Grafton, in 1853. He was engaged in the practice of law for nearly thirty years. His office was located at Bath from 1853 until 1881, when he was appointed associate justice of the Supreme Court; but in the later years of his professional labors his practice extended over a considerable portion of the state. He was for a few years following his admission to the bar a member of the firm of Goodall & Carpenter; and in the later years of his practice he associated with himself Philip Carpenter, his son, now a prominent, skilful and successful lawyer in the city of New York. He was married in 1853 to Julia R. Goodall, daughter of Ira Goodall, who now survives him. The children of Judge Carpenter were Lilian, the accomplished wife of Frank S. Streeter, of Concord, New Hampshire; Philip Carpenter, of New York; Francis Henry, who died in infancy; Arthur H., an attorney at law, who died some years before his father; Edith Carpenter, now Mrs. Thomas; and Helen Carpenter.

Judge Carpenter's leading characteristics were his commanding intellectuality, his personal courage, relentless purpose, remarkable energy, and tireless and never-ceasing industry; and among the accomplishments of his life was his superb legal and general scholarship. He was solicitor for Grafton county for two full terms, from 1863 to 1873, when the office was filled through appointment by the governor. So far as I know, this was the only office ever held by him, aside from that of associate justice and later that of chief justice of the Supreme Court of the State of New Hampshire. He acted upon the idea that one who embarked in the profession of the law should avoid politics and outside business entanglements, as something threatening success in the legal profession. I remember hearing him

say, as early as 1873 or 1874, that no lawyer should either desire or accept any office outside the line of his profession; and his incumbency of the office of solicitor was justified by him, on the ground that it afforded one feature of legal education necessary to a successful career in the profession. In his early practice at Bath he was drawn into contact and association with such lawyers as Andrew S. Woods, who had been chief justice of the state; Harry Hibbard, leader of the bar of Grafton county, "and the foremost intellect in the Democracy of the north country in his day," and Ira Goodall, also prominent in the profession; but, equipped with a liberal education, with indomitable will, and habits of industry, and acting upon the appreciation of the demands of the legal profession to which I have referred, no result was possible for him other than an extensive, respectable, and successful practice. And let me here remark that there is no situation more desirable, more worthy of being sought after, than that which presents an intellectual lawyer, independently, boldly and successfully maintaining the just rights of an intelligent and respectable clientage, which in return freely and abundantly rewards the labor according to its merit.

I first met Judge Carpenter professionally in 1878 or 1879, I should think, when I went to him at his office in Bath for conference and for the purpose of bringing a proceeding in equity to regulate the rights of the stockholders of the Connecticut River & Lake Improvement Co. The care and method which he used in the investigation of the intricate questions involved in the situation was a valuable lesson to me, as a young practitioner, as well as a severe strain upon the patience of a young man not fully schooled in the intricacies of the rules of procedure then existing in New Hampshire, who wanted to get at results with a rush. As a result of the conference, Mr. Carpenter knew all about the case that I did, and a bill was drawn which was perfect in its statement of the situation, and a plan was laid out as

to the proofs necessary to maintain the positions of fact taken in the bill. At his suggestion, the Hon. Harry Bingham was retained in the case to make the argument in the cause, which was afterwards tried, I believe, before Judge Isaac W. Smith; William S. Ladd and Ossian Ray appearing for the defence; and Mr. Bingham, who was the oldest of the men most prominently engaged in the trial, is the only survivor.

A few days ago I called upon the venerable Harry Bingham and said: "Judge, you are the man who, all agree, should prepare an address in memory of Judge Carpenter; but as you have decided that you ought not to undertake the work, I want you to tell me what you consider the chief factor in his success as a practitioner." After considerable deliberation the old gentleman remarked: "Well, first of all, he understood his case before he brought it, and when he brought it he got his writ right;" and then, after further deliberation, he said: "I do n't remember that in the whole period, covering nearly thirty years, in all the cases in which I was with him or against him, that he got his writ wrong and that we had to fuss about that." This may not mean much to the younger members of the bar who are schooled in and practice under the modern system, which permits the pleadings to be changed when exigencies arise and as justice requires; but to those who practised in the days when the system of special pleadings obtained in New Hampshire, it means a great deal; it means not only that the lawyer must accurately understand the system, but that he must fully understand the facts of his case and must have industry and method and foresight sufficient to state the case in such form as would meet the exacting technical requirements of the old system.

Judge George A. Bingham's estimate of Judge Carpenter as a practising lawyer is of interest. It was given on an occasion when, being associated with George A. Bingham, we were about to engage in the trial of a jury case, where

Judge Carpenter was to appear on the other side. I said to Mr. Bingham: "How does Carpenter try a case?" "Well," he said, "he is a formidable man in a trial; I do not know of one more so; he thoroughly understands every case before he embarks upon the trial, and formulates a theory which embraces the whole controversy; his pleadings are always skilfully drawn, and he makes a thorough, careful, comprehensive and detailed statement of the case in his opening to the jury, and the statement is made with a manner and an emphasis and in language which every juror will understand; his opening statement is so complete that it becomes a breastwork around his case which remains well defined through all the assaults of the trial." He said: "He is a man who believes as I do, that, in order to make a suitable opening statement to the jury, a lawyer must understand his case; and that more cases are won before a jury through the influence of a skilful opening statement than through the influence of the closing argument." Aside from this, his proofs were prepared with care; his witnesses were called in proper order, and he cross-examined the witness of the adversary with remarkable skill and quiet energy. He was never boisterous or offensive in his manner or speech to the court, or to the opposing witnesses. With the care of the pleadings, the opening statement, the introduction of the evidence for his client, the cross-examination of the witnesses of the opposition, his responsibility with respect to a jury trial ended. I do not remember of ever hearing him make a closing argument to the jury, and I do not think he interfered much with the man who was to make the closing argument. I think his idea was, that the responsibilities were theoretically and practically independent. I think he acted upon the theory that if he were in a case, the case could be better tried by his taking the whole responsibility with respect to the opening statement and the evidence, and that he should leave the responsibility of the argument upon the case which he had perfected, to his asso-

ciate, who was there for that purpose. In his work before a jury as a lawyer his manner was that of quiet energy; his speech was epigrammatic and incisive; his terseness was like "the terseness of Junius."

On the occasion of the resignation of the Hon. John Lowell from the circuit judgeship of the first circuit, now occupied by Judge Le Baron B. Colt, of Rhode Island, Judge Carpenter was New Hampshire's candidate for that position, and had the enthusiastic support of the state and that of a considerable portion of the bar of Suffolk county, in Massachusetts. Judge Carpenter habitually and humorously claimed (as a similar caprice, I presume, to that in which Judge Doe claimed that he never read the newspapers or the magazines, or anything but law books) that he was independent in politics. Those who knew him best believed this was a device for keeping out of political life, and this belief is based upon the fact that whenever you got down to practical conditions and necessities, he was a Federalist, a Whig, and a Republican.

The Hon. Jeremiah Smith, who now occupies an honored chair at old Harvard, was associate justice of the Supreme Court of New Hampshire from some time in 1867 to 1874. During this period Judge Carpenter was at the zenith of his strength and power at the bar. I had occasion to write Judge Smith a few days ago for information upon a point relative to Judge Carpenter, but foreign to what I am about to quote. To my great delight, Judge Smith, in replying, gave brief expression of his appreciation of Judge Carpenter at the bar and on the bench. The commanding position of Judge Smith in the profession, and the tender tie which binds him to the bar of New Hampshire, make his expressions of especial interest on this occasion. Therefore, having obtained permission to that end, I may properly and usefully quote Judge Smith, who says: "One point is Judge Carpenter's preëminent ability as counsel before the law term. In the days when I listened to arguments

on questions of law, there were occasional instances where other counsel did as well as his best, but the arguments of no other lawyer averaged as well as Judge Carpenter's. He was always on a high level, which other men attained only in rare instances. I have said again and again that, taking the arguments as a whole, no other counsel at the law term came up to Judge Carpenter's standard. In this department of professional labor he was *facile princeps*.

"At the trial terms, he preferred, as you know, to act as junior; and he frequently had Mr. Harry Hibbard as his senior, an association beneficial to both counsel and to their clients. They were very different men, both in mental qualities and in external manner. Each supplemented the other, and together they formed a very powerful combination. Most of the strong legal partnerships, so far as I know, have been composed of men who had widely different characteristics each from the other: *e. g.*, Ray & Ladd; Wheeler & Faulkner; Morrison & Stanley; and two other firms, which I know only by tradition, *viz.*, Pierce & Minot, and Atherton & Sawyer.

"One thing more. Some of the lawyers who have seen Judge Carpenter only on the bench have, perhaps, formed the opinion that he was callous; that he regarded the plaintiff and defendant as parties litigant rather than as human beings; that he looked at each case simply as a bundle of law points, and never from a humanitarian point of view. That is a very mistaken opinion. Judge Carpenter on the bench, was a man of few words and did not give expression to all that he felt. But he really was a man of strong feeling, and did not decide without thinking of the practical consequences to the parties. In the last letter I ever had from Judge Carpenter, written within a few weeks of his death, referring to one of his recent decisions disallowing the claim of a child to be compensated for a serious accident, he said: 'The case has caused me great anxiety, and

I feel by no means so sure as I wish I might, and as in ordinary cases I do, that the decision is right. I have felt oppressed, not only by the decisions in a contrary direction, but by the humanitarian aspect. As a possible "head-note," this has been constantly humming in my ears, viz., "Man's inhumanity to man makes countless thousands mourn." "

Judge Carpenter, when at the bar and on the bench, never took stated vacations or periods of rest from the line of legal thought which engaged his life. This is equally true of Chief Justice Doe, his associate on the bench, between Judge Carpenter and whom I shall make some comparisons later on. This, I think, was a mistake—is a mistake in any lawyer's or judge's life. I believe that the usefulness of the lawyer or judge who is subjected to the strain of responsibility and thought, involved in the discharge of duty in either sphere, is emphasized by periods of absolute divorce from the harness, and that life and strength are thereby prolonged. Without enlarging upon this idea, which I always intend to keep with me, the whole argument may be presented by the remark of a distinguished New York lawyer, who said that he could respond easily and comfortably to all the demands of his business in eleven months, but could not possibly do it in twelve, for twelve months was too short a time.

Judge Carpenter was appointed associate justice of the Supreme Court September 1, 1881, and served continuously as associate justice until April 1, 1896, when he was appointed chief justice, to fill the vacancy caused by the death of Chief Justice Doe; so it will be seen that his entire judicial life as associate justice was in connection with that of the chief justice whom he succeeded.

We may not pay tribute to the living, and it is not within the reasonable or proper scope of the purposes of this paper that I should attempt a discussion of the personnel of the New Hampshire Supreme Court during the seventeen years

that Judge Carpenter was a member, as associate and chief justice. I do think it in point, however, to institute some comparison between Judge Carpenter, the subject in hand, and Chief Justice Doe, whom he succeeded, for the reason that in the minds of many their names are inseparably interlocked by their association in judicial service and by antagonisms supposed to have resulted from different characteristics and different judicial tendencies, and for the further reason that the assumption is often made that they represent different schools of judicial trend.

True it is that whenever you associate two men, of the industry and purpose of Judge Doe and Judge Carpenter, for a long period in the same line, each with the same responsibility and power, one cannot be thought of, or spoken of, without suggesting the other; but if the theory is accepted that they belonged to different schools of the law, it must be accepted in a limited sense.

Judge Doe's life came into our generation like a quiet, wholesome and renovating breeze, to simplify, freshen and purify the administration of justice. His inspiration was to ameliorate the oppression of those whose rights were, and in the future might be, involved in legal controversy. His ambition was to make the end of litigation speedy and inexpensive. His judicial life was to practically demonstrate that in legal procedure a straight line was shorter, easier, and more desirable than a line of abrupt and illy-defined angles and tangents; that a straight line between two points is easier than a tortuous and roundabout line; that in legal procedure as in other spheres, directness is more desirable than indirectness. He did not regard the precedent of decision as always and forever binding. His inspiration and philosophy easily taught him that when the reasons for a rule had ceased to exist, that the rule was fictional and should cease to exist as an imperative rule of judicial action; that new conditions required new remedies, and that new conditions and emergencies sometimes required modifica-

tions of the ancient rules of law, when the modification or change would further justice.

Judge Carpenter came to the bench, as his associate, with ripe experience at the bar. His legal acquirements were among the rarest. He was well versed in the old common law, and knew the decisions as well as it is possible for anyone to know them in their rapid flow. He had a naturally combative and tenacious mind, and held more closely to precedent than did his chief. Judge Doe was distinctively of the progressive school of the law, which teaches that the inherent impulsive principles of the common law are sufficiently expansive to meet the requirements of justice, and that the elastic principles and procedure of equity jurisprudence are equally convenient and salutary.

While Judge Carpenter was of the progressive school, he was more conservative. While progression is more captivating and perhaps greater than stability, safety requires that it shall ever be held accountable to conservatism. Judge Carpenter was in accord with Judge Doe as to the general proposition that "the law favoureth matters of substance more than matters of circumstance," but as to what was matter of circumstance or form or strictly remedial rather than substantive right, was not always upon the advanced lines reached and held by Chief Justice Doe. The mind of each was acute, and each could readily fortify himself with all the precedent, the logic, and the justice which sustained his position. It is not strange, therefore, that we find them in forcible and frequent opposition in the reported decisions of the Supreme Court of New Hampshire during their association on that court. And as a general remark, let me say, that when New Hampshire has two such men on the bench, the security against bad law by mistake in the sense of oversight, is absolute, and any departure from the beaten path of judicial decision will not be made unless there are strong demands of justice requiring it.

Judge Carpenter was well equipped for mastership in the legal school of technique, but it must be said that he did not practice the art of technique as a leading, or a substantial, feature of his judicial life. As a rule he did not oppose the enlargement of remedy for the purpose of the better enforcement of a right. He acted generally upon the idea that the common law had inherent power equal to its enforcement in respect to all right, and that while its remedial arm might be extended and expanded to meet new exigencies in respect to the enforcement of right, that its expansive principles do not warrant judicial action which modifies, changes or abrogates substantive law or right; that remedy and process might be extended in enforcement of a right, while a rule of law was so far vested or fixed, that it could not be changed by judicial action, and should be administered by the courts until a change should come through legislation to that end; that the judicial requirement was to have the law of right enforced as it is; and that judicial enlargement of remedy, and judicial disturbance of right, are two things. That he did not belong to the tribal or strict constructionist school of the law is well shown by his masterly review of the law relating to questions concerning the right of challenge and the qualifications of jurors in *State v. Sawtelle* (66 N. H. 488) and his research in that case, which traces the history of jury qualifications from the ancient days when jurors were summoned in large bodies, and in order to be competent to sit, must have knowledge of the facts of the case to be tried, through its development to that degree of refinement, when having read about the case or hearing the case talked about, disqualified; and then through the impulse of a present necessity, he established the rule which admits the juror who has heard the case talked about, who has read the papers which purport to give a correct version of the case, and who has expressed an opinion, provided the juror upon examination declares that, notwithstanding all this,

he can fairly weigh the evidence and decide, and provided also the court at the trial finds the fact so to be.

This holding involves a turn again in the direction of the ancient rule, and it resulted by reason of the demands of necessity, and the necessity came, strange as the expression may seem, from the advanced and widespread enlightenment of our people, from whom jurors must be selected, and the fact that in our day the newspapers publish and spread broadcast detailed accounts of all controversies which affect the interests of the general public, which are read by the great majority of intelligent men; and thus it followed, as an inevitable consequence, if the reading and the incidental expression of an impression or an opinion excluded from jury service, that the proper tribunal could not in the nature of present conditions, be had. The opinion in this case is a notable illustration of the inherent and expansive administrative power of the law, through its courts, and at once places its author within the reasonable bounds of the progressive school. This opinion is regarded by the profession and by courts outside of this jurisdiction as a valuable contribution to legal literature and the necessities of modern judicial conditions; and as a forceful and masterly exhibition of the adaptational force in jurisprudence.

As showing the irresistible force of Judge Carpenter's logic, and the terseness and cogency of his reasoning, I may be permitted to quote a few sentences from the opinion in that case. The Sawtelle case will be remembered as one involving a homicide under such circumstances of atrocity as would naturally give it widespread notoriety, with resulting violent prejudice in the minds of the public. The questions for the jury were whether Sawtelle killed his brother, and if so, whether the killing was in New Hampshire, or Maine. At the trial two jurors were admitted, who, on examination, said they had formed opinions unfavorable to the respondent, but could decide the case

upon the evidence, although one juror said his opinion was so strong that it would require evidence to change it. The trial court found them competent and qualified to sit as jurors under the circumstances of the case. The jury trial was presided over by Chief Justice Doe and Associate Justice George A. Bingham, I believe, and the "Case," or bill of exceptions, for the law court, presumably in the words of Judge Doe, states the question as follows: "There was no probability that twelve jurors, qualified in other respects, could be found in the county who had not formed an opinion that the defendant was guilty of murder in New Hampshire, or Maine. If all who had formed such an opinion were rejected, he could not be tried." A new trial was contended for in the Supreme Court, on the ground that Sawtelle had not been given the fair trial guaranteed by the Bill of Rights, for the reason that he had been found guilty of murder in the first degree, by a jury, two of whom had formed and expressed opinions. Such ground, according to the ordinary acceptation by the profession, of then existing law, would have been fatal to the trial. The opinion in the case covers thirty-six pages, and, aside from the law on the question at issue, presents an exceedingly interesting historical review of the development of the jury system, the right of challenge, and the questions of competency and qualifications of jurors.

This modern difficult question of competency of jurors, which has been dealt with indifferently and unsatisfactorily in other jurisdictions, was, upon grounds of reason and necessity, settled in this case satisfactorily and forever. Judge Carpenter starts at once with the constitutional guaranty declared by Art. 35 of the Bill of Rights of New Hampshire, that: "It is the right of every citizen to be tried by judges as impartial as the lot of humanity will admit," and boldly assumes that by the term "judges," used in this connection, it was intended to apply to jurors as well as judges; and then, referring to the language, "as

impartial as the lot of humanity will admit," says: "It presupposes that unqualified disinterestedness may be impossible of attainment. * * * The framers of the constitution did not intend that private right should be incapable of vindication, or that crime should go unpunished, whenever, under the frame of government by them ordained, an absolutely indifferent tribunal for the enforcement of law could not be obtained." Again, "The common law on this subject, as upon all others, is natural law." Passing the historical discussion, and that part of the opinion in which he makes the distinction between classes having motive from interest or relationship, and coming to the main point of the decision, I will quote another paragraph or two as showing the bold and sweeping comprehensiveness of the reasoning employed and of the rule enunciated. Referring again to this statute, he says: "Justice required that the defendant should be tried by persons 'best qualified to serve as jurors.'" Continuing, he says: "Such persons generally form, and frequently express, opinions of the guilt and the deserts of the accused in a case of this kind before the trial. Upon newspaper report, they often declare with emphasis that he ought to be hung, and that they would hang him if they were on the jury. There is no occasion for surprise when those who have been the most violent in such denunciation, being empanelled in the case, are held by the evidence and the sense of responsibility to take a firm stand on the other side. * * * In cases of startling crime, and others of public interest and notoriety, all intelligent residents of the county 'best qualified to serve as jurors,' now stand in the position occupied by the residents of the immediate neighborhood of a like transaction four hundred years ago.

"Few, if any, can be found who have not formed an opinion of more or less strength before the cause comes to trial. Information given by the public press differs in no respect from oral hearsay. Its weight and effect upon the

mind depend in part upon the supposed reliability of the informer. However unreliable he may be deemed, it may create some impression. The difference between an impression and an opinion—even a ‘fixed and settled’ opinion—is a difference of degree only. However weak it may be, further consideration or further information is necessary to change it. When persons drawn for jury service say they have formed opinions which it would take evidence to remove, or, as in this case, have formed opinions which are so strong that it would require evidence to change them, a portion of their testimony is superfluous. In belief, as in the material world, changes do not occur without reason. Opinions are not formed or abandoned without cause. If all the residents of the county (being otherwise competent), whose opinion of this case could only be changed by evidence, were excluded from the jury, the defendant could not be tried.” As you all know, as a result of the research and reasoning in this case, the exceptions were overruled, and the verdict of guilty was sustained.

Judge Carpenter dissented in *Gage v. Gage* (66 N. H. 282), where the majority opinion gives a right of action in some form, for the balance due upon an equitable accounting, to a tenant in common against his co-tenant, who has used more than his share of the common property. It must be borne in mind that it is not my purpose, in calling attention to the different views of judges, to discuss the question as to which view was right, but rather to show the judicial tendency and the line upon which they diverged, if we may discover it. In the dissenting opinion, in *Gage v. Gage*, Judge Carpenter says: “The common law recognizes no right for the violation of which it does not provide a remedy. If it gives no remedy, it gives no right. * * * In some cases it gives a remedy without legal process. * * * To take away all remedy for its infringement is, in legal effect, a repeal of the law. * * * To give a remedy

where none by law exists, is to enact a law creating rights. In each case alike it is legislation."

In effect this means where there is no remedy there is no right; while Judge Doe would say if a right is found it presupposes a remedy, and one should be found suitable for its enforcement; and herein, in this particular case, lies the point of divergence. It must be understood that this reasoning of Judge Carpenter is applied to a particular situation, that of the right of one tenant in common to recover from another who is in possession, and his position is that no right of recovery was intended by the law; and he says: "The doctrine is the logical and necessary consequence of the nature of the estate. It is the law, not of remedy, but of right." So, as will be seen, the disagreement, after all, is not as to the progressive and expanding qualities of the law, as a general proposition, but in applying the principle to a particular situation; and Judge Carpenter's contention was that no such right, no such remedy, and no such recovery was intended by the law or the parties, and that it was inconsistent with the nature of the estate, and the fundamental relations of the parties.

But after all this only illustrates (as will most cases where Judges Doe and Carpenter were in opposition, I imagine, if they are carefully analyzed) that the disagreement was in the application of the new or expanded relief to a right or a situation, and that upon the broader question as to the influence and power of the growing and expanding fundamental force inherent in the system, which was invented and has its existence for the express and undeniable purpose of ascertaining, regulating, establishing, and enforcing right through remedy, they were in general accord.

And let me here remark, that while we adopted bodily the fundamental framework of the great system of English jurisprudence, so far as not inconsistent with our institutions, and while we have received many lessons from the English courts as to the use of the inherent growing force

which was designed to be used for the purposes of improvement, England, in return, has absorbed and acknowledges some of the beneficial reformatory ideas developed under the genius of the institutions on this side of the ocean. In support of this thought, I may properly borrow the words of Mr. Webster used in his eulogy of Mr. Justice Story, before the Suffolk bar, September 12, 1845, who said: "Acknowledging, as we all acknowledge, our obligation to the original sources of the English law, as well as of civil liberty, we have seen in our generation copious and salutary streams turning and running backward, replenishing their original fountains, and giving a fresher and a brighter green to the fields of English jurisprudence."

The sweeping expression of Judge Carpenter in *Gage v. Gage*, that, "The common law recognizes no right for the violation of which it does not provide a remedy;" his opinion in *Robinson v. Robinson* (66 N. H. 600), the Christian Science divorce case, and the fact that he concurred in the reasoning and result in the Barker will case (66 N. H. 434), wherein the will was assailed by reason of a devise to trustees for the support of the testator's children during their lives, the remainder to his grandchildren, born and unborn, when the youngest arrives at the age of forty years, and wherein distinguished counsel urged that it was a conceded and ancient principle that the future interests must vest within a life or lives in being and twenty-one years afterwards, and wherein it was held, in an opinion by Chief Justice Doe, that: "The law determines not what will he (Barker) would have made if he had known that the last nineteen of the forty years were too remote, but what will he did make in ignorance of this flaw in his appointment of time." That: "His (Barker's) intent that the grandchildren shall not have the remainder till the youngest arrived at the age of forty years is modified by his intent that they shall have it, and that the will shall take effect as far as possible." And that: "The forty years are reduced to

twenty-one by his general approximating purpose, which is a part of the will,"—demonstrates clearly enough that he did not belong to the school of the law which takes the path "that begins nowhere and ends in darkness," but rather that which, illuminated by principle and justice, will end in a comprehensive and effectual administration of the law for the establishment and enforcement of right.

Boody v. Watson (64 N. H., 162) perhaps illustrates as forcibly as any case in the reports the lucidity and power of expression of these two eminent judges, Doe and Carpenter, when differing as to the remedial power of courts. In that case the selectmen of Northwood, under vote of the town for a second ten years' exemption from taxation which was not authorized by law, omitted to tax certain shoe-factory property in that town, and certain citizens and taxpayers subsequently petitioned the court for an order of assessment. The opinion of a majority of the court was by Chief Justice Doe, and the dissenting opinion was by Judge Carpenter, in which Judge George A. Bingham concurred. It is not my purpose, neither is it within the scope of this paper, to make clear the full line and strength of reasoning of the two judges; but a few brief quotations from each opinion are of interest, and are not out of place, in view of the line of thought which I have undertaken.

The position of Chief Justice Doe, of course, was that the constitution and the law required that the property should be assessed. And he says: "When the law commands a thing to be done, it puts in requisition the means of executing its command." Again: "We are not entrusted with the power of infringing substantive rights by withholding the necessary, incident, and appurtenant right of complete remedy; the common law duty of inventing necessary forms of action, pleading, trial, judgment, and initial, intermediate, and final process, is as imperative now as it was during the ages in which its performance produced all the common law procedure which is obsolete, and all

that is now in use." Again : "The efficacy of process does not depend upon the records giving it a technical name in a dead or living language. There is no law for turning the plaintiffs out of court on a question of terminology."

Again : "The plaintiffs' primary and substantive right is based, not on the defendants' duty of judicial assessment, or on their or our correctional duty, but on the legislative assignment to the factory of its share of a common expense incurred in the execution of the social contract." Again : "They (the plaintiffs) were entitled to such a process as would carry into effect the expressed will of the legislature that made the Pillsburys liable, as owners of the factory, for a proportional share of the common burden." Again : "The question of remedy is, whether the plaintiffs have lost all judicial means of maintaining their surviving legal right and enforcing the Pillsburys' surviving legal obligation." Again : "In the absence of statutory regulation in this country, the general judicial superintendence is vested by the common law in the highest court of general common-law jurisdiction." "The writs named in the statute are not restricted to the uses that have been made of them. They may be modified and adapted to the wants of particular cases, 'on grounds of convenience and expediency.'"

"The distinction between substantive rights and their common-law remedies recovered its original importance when rights were liberated from the oppressive yoke of remedial form, which materially confounded the distinction, and inculcated false ideas of law. The question of form of action is not considered when it is of no practical consequence, and time spent upon it would be wasted."

"The constitution does not provide that judicial duties of tax assessment shall *not* be imposed upon the highest judicial tribunal." "'The questions of liability and amount are questions of indebtedness, and are of a judicial nature. The decision of those questions, upon existing law, with or without notice, is essentially an exercise of a judicial

faculty. And when they are decided after notice and an opportunity for both parties to be heard, and with a power of carrying the decision into execution, the proceeding is not constitutionally excluded from the judicial jurisdiction.” One more quotation: “Nothing less than a positive declaration of an intent to render all such statutes inoperative could justify a belief that the law-making power had adopted a measure so subversive of civil society.” Again: “It is an old doctrine, that things happening by an invincible necessity, though they be against common law or an act of parliament, shall not be prejudicial.” Again: “As a general rule, when a duty is at the proper time asked to be done, and improperly refused to be done, the right to compel it to be done is fixed, and is not destroyed by the lapse of the time within which in the first place the duty ought to have been done.” Again, borrowing the expression of Lord Kenyon, “The forms of the court are always best used when they are made subservient to the justice of the case.”

I will not quote further from the opinion of Chief Justice Doe, which covers thirty pages, but will ask your attention to some leading paragraphs in Judge Carpenter’s remarkable dissenting opinion of fifteen pages. He says: “If it has been held in other jurisdictions that final judicial process may issue against persons not parties to the proceeding and who have had no notice and no opportunity to be heard, such is not the law of this state. * * * Neither the defendants’ successors in office nor the Pillsburys are parties. They have had no notice of the proceeding. They have had no hearing and no opportunity to be heard. They are not concluded or affected by the facts found. A judgment against the selectmen now in office, requiring them to assess the tax, or against the Pillsburys, that a tax be assessed by the court or by any one under its direction, would be a judgment rendered without jurisdiction.” Again: “The defendants, being selectmen of Northwood

for the year 1884, neglected to assess on the property of Pillsbury Brothers a tax which the law required them to assess. Their term of office, as well as the tax year 1884, has long since expired. The sole question before the court is, whether it can lawfully order them to do now, that which they ought to have done while in office. It is not material whether a Latin, English, or other name be given to a judicial order of this character. To its lawful issue under any name, or in any form, two essential requisites must concur, namely, (1) a right in the plaintiff to have the thing in question done, and (2) power in the party against whom the order is sought to do it. If either is wanting, the application must be denied. Here both are wanting. The defendants have no power to assess the tax, and the plaintiffs have no right to its assessment."

Again: "Selectmen are public officers whose powers and duties are prescribed by statute. They have no authority to assess taxes or to do any official act except such as is conferred upon them by the legislature. Although they exercise some functions of a judicial nature * * * they are not within the meaning of the constitution, * * * judges, judicial officers, or a court." Referring to the selectmen, he says: "When their invoice and assessment were completed and recorded, their taxing power was exhausted. * * * Errors not curable by abatement under General Laws (chapter 57, ss. 11, 12) were irremediable. Assessed taxes might for good cause be abated, but no other or additional tax could be assessed." Again: "For reasons satisfactory to the legislative judgment, it has restricted the exercise of the corrective power to the errors mentioned and to the tax year." "The plaintiffs concede that the defendants cannot now of their own motion assess the tax, but insist that they may nevertheless be authorized and compelled to assess it by the court. * * * If the court can confer the power, it may give it as well to any other persons as to them, and this petition might have been

as properly brought against the county commissioners, the sheriff, or any private citizens of Northwood or of the state, as against the defendants."

"It is the province of courts to vindicate legal rights and redress legal wrongs; to administer not abstract justice, or justice as they may think it to be, but justice as declared by law. * * * They may ascertain rights under the established law, award compensation for their violation, and in some cases restrain the commission of threatened wrong and compel the performance of legal duty. Beyond this they have no power to go. To create obligations, to impose duties and to confer powers, are functions, not of the law-administering, but of the law-making, branch of the government. 'Judicial power as contradistinguished from the power of the laws has no existence. Courts are the mere instruments of the law, and can will nothing.' * * * In proper cases they may issue their mandate to a public officer requiring him to perform his official duty. But by it no new duty is imposed or power conferred. By virtue of it the officer is charged with no obligation not previously incumbent upon him, and can take no action which he could not take without it." Again: "The court cannot lawfully issue an order to any person not bound by law, independent of the order, to obey it. Power to command implies the duty of obedience. The fact that no person is bound by law to obey a particular command is superior evidence that the court cannot lawfully make it." Again: "The unquestioned authority of the court to keep all inferior tribunals within their jurisdiction, and to correct their errors of law, does not include the power to create such tribunals, to confer upon them authority, or to do the work which the law declares shall be done exclusively by them." Again: "The way in which an officer's authority is terminated, whether by expiration of his term of office, by repeal of the statute creating it, by other act of the law, by his resignation, removal, or

death, cannot be material. In no one of these instances is the power of official action more effectively gone than in another. The court is no more incapable of restoring it by the law of nature in the one case than it is in the others by the law of the land. The plaintiffs have no right to have the assessment made. It is not the plaintiffs' constitutional right to equal taxation, but their statutory right to the assessment of the particular tax on the Pillsbury factory, which is in question. The plaintiffs assert under the statutes a specific right, which in the absence of the statutes confessedly does not exist. The inequality of taxation, if any, produced by them is immaterial except upon the question of their construction, if that is doubtful. It is also immaterial, for reasons already stated, that the right existed during the tax year of 1884. The question is upon its existence now." Again: "The plaintiffs' right, and the Pillsburys' liability to the assessment, are co-extensive and correlative; the former cannot exist without the latter. If there is no provision of the statute requiring the assessment to be made, it is the Pillsburys' right that it shall not be made." "Taxation for public purposes is a conceded power of government, but it must be enforced strictly according to law or it becomes the most obnoxious means of confiscation." "The doctrine has always from the earliest period been vigorously maintained by this court. The cases are cited in the margin."

And as showing Judge Carpenter's industry, it is worth while to refer to the marginal note, which begins with *Harris v. Willard*, in Smith, and ends with *Weeks v. Waldron*, 64 N. H. 149, and contains the citation of seventy-three cases. Again, he says: "The right of every citizen that his property shall not be taken by the state under the name of a tax except in pursuance of authorizing statutes, is not only affirmed by the common law, but is secured to him by the express terms of the constitution." Again: "The whole matter of taxation rests in the control of the

legislature, subject to the restraints and control of the constitution. It is as supreme within its province as the parliament of England. It can impose taxes, and require them to be assessed and collected under whatever limitations and conditions it may deem proper. It is competent for it to declare that they shall be assessed by certain officers and by no others, within a time limited and not afterward, in a prescribed manner and not otherwise. Whenever it has proclaimed the legislative will in these particulars, the taking of a man's property under the guise of a tax assessed by any other officers, at any other time or in any other manner, is not taxation but robbery, and none the less so if it be done under the sanction of the court. It is no justification that the money taken is paid into the public treasury and applied to governmental purposes, that no more is taken than his just share of the public expense, and that if not taken his neighbors would be compelled to pay more than their due share of the common burden. All general laws may sometimes work injustice. If they do, it affords the legislature a good reason for amending them, but none to anybody for violating or ignoring them. In a government by law, the administration of abstract justice contrary to law is the most mischievous of all wrongs." In conclusion, Judge Carpenter says: "The judiciary has never hesitated to exert its authority to keep the legislative department within its province. It controls both that and the executive branch, so far as to keep them from exceeding their constitutional powers. * * * Neither the legislature nor the executive can revise its action or reverse its judgments. It is supreme. If it condemns without notice, adjudges without hearing, denies justice, or, what is equivalent, administers that which it is pleased to call justice, in defiance of the legislative will, the people have no remedy except by impeachment and removal, or by revolution. It ought, therefore, while it is vigilant to restrain usurpations of the law-making and law-executing branches of the gov-

erument, to be especially watchful that it does not itself trespass upon the domain of either. It is wiser to refer the correction of the occasional mischiefs incidental to all general laws to the legislature, which is always at hand, than to assume the exercise of a questionable jurisdiction."

So it will be seen that in this case the disagreement was upon the question of substantive right under the constitution and the statutes, and the argument of Judge Carpenter against the remedy was based upon what he contended was no right in the plaintiffs to have the tax assessed except under the express provisions of the statute and the right of the Pillsburys to have the tax so assessed, if at all.

And my reasons for quoting thus freely from this case, for which I must be pardoned, are threefold: first, for the purpose of showing the mettle and acuteness of the two men; second, the similarity in style of forceful expression; and third, to show that after all Judge Carpenter's dissent was not on the technical ground that the common law affords no inherent principle of expansive remedial power for the enforcement of new rights, but upon the ground that there was no substantive right in that case, and that the effect of the majority opinion was to create the right and then provide a remedy for its enforcement; while the point of Judge Doe's contention was that the plaintiffs' substantive right resided in the constitutional and legislative obligation of the Pillsburys to bear their share of the public burden and that the remedy should be found.

The dissenting opinion of Judge Carpenter in *Stevens v. Underhill* (67 N. H. 68) is another notable exhibition of his power of succinct and forceful reasoning. It is not possible on this occasion to review the extensive work of Judge Carpenter during the seventeen years he was upon the Supreme Court bench, or even refer to his leading and interesting opinions. If you were to take the general expression of the bar of New Hampshire, his opinion in *Nashua Iron & Steel Co. v. Worcester & Nashua R. R.* (62

N. H. 159) would probably be accorded the position of his masterpiece. This opinion was written in 1882, in the early years of his judicial labors, and is a wonderful work of clear analysis and perspicuity of reasoning and statement.

I am conscious of having already taken too much of the time of a bar who are more familiar with his judicial work of the last ten years than I could claim to be, for my labors have taken me somewhat out of close contact and observation. That his labors have been great, and that his judicial influence has been effective and salutary, goes without saying.

Having instituted this comparison between Judges Doe and Carpenter, I cannot leave this point in my subject without referring to the nobility of character exhibited by the two men, whose lives were so closely interlocked. The absolute dedication of their lives and work to their chosen profession is something more than unique. The high conception of the profession, which induced them to subdue political ambition and throw aside political preferment, which was often within their reach, and all to the end that their chosen work should be better done and that the blessings thereof should descend through the coming ages, constitutes a professional devotion worthy of being emulated. The high regard and respect of the one for the other is known to you all. Each was tolerant of the reason and inspired by the logic of the other. This is generally true of strong men. One who cannot tolerate the reasoning of opposition from an equally strong man at once becomes weak, and the strength of his own reasoning becomes blind and useless rage without power. Neither had vain and unreasoning pride of opinion. They quietly, patiently, and respectfully listened to each other's reasons. This was delightful. There is no personal characteristic more disagreeable and offensive than the vixenish characteristic exhibited by a person who demands to be listened to and after having expressed himself, and the person representing

the other side of the conversation or conference attempts a reply, refuses to listen to opposing reason himself, and at once begins to reiterate what has already been said. Such a characteristic is based upon selfish assumption and offensive intolerance. The accomplishment of listening to another with opposite views is as charming as that of talking well. None but the inordinately selfish and the ignorant and the unphilosophic insist upon their views as always right and absolutely final. Those who always talk and won't listen, selfishly assume to themselves, all the wisdom, and those who differ, however quietly, are necessarily wrong.

Franklin, in condemning intolerance, said: "Most men indeed, as well as most sects of religion, think themselves in possession of all truth; and that wherever others differ from them, it is so far error. "But," he says, "the older I grow, the more apt I am to doubt my own judgment and to pay respect to the judgment of others."

In their judicial intercourse, so far as I know, neither of these men was within that part of Franklin's expression which involves a rebuke to intolerance. I remember of hearing Judge Carpenter say of Judge Doe, within a year or two of his death, in his full-hearted and exuberant appreciation, that no judge ever lived, save one, who exercised a more potential influence in the direction of judicial reform in his own jurisdiction than Judge Doe, and that was Lord Mansfield. Judge Doe was equally generous in his estimation of the scholarship, the legal ability and force of Judge Carpenter.

Judge Carpenter's simplicity of life is another characteristic worthy of mention. His judicial life was entirely without ostentatious show of pride or power. And his life as a whole was simple, but effective and useful.

Aside from the law, Judge Carpenter was a great general reader. As one very close to him says, he was omnivorous in his reading, reading everything he could lay his hands on from a Sabbath-school story and the *Youth's Com-*

panion, up to Huxley and Darwin and Spencer. He read French as readily as English, and of late years most of his reading for recreation was of French novels and the English and American magazines. He read Italian with a fair understanding, and was an excellent German scholar and fond of German literature. He read Spanish a little. Greek and Latin he knew very well and, when he was younger, often took a Greek or Latin book in his bag when traveling. Of late, however, he preferred a French novel to the Greek or Latin, as being more of a recreation. He was fond of Dumas, and read all his works; and was fond of comparing him to Walter Scott, and expressed himself as thinking that they had many points in common. His French reading included Balzac, Gaboriau, Zola, and many other of the French authors. For many years, and until within twelve or fifteen years, he read Hume once a year, regularly. It is supposed that he did this as a matter of discipline, and it must be said in justice to his literary tastes, that the French novel reading was for the merest recreation. He was fond of mathematics, and in later years often spent hours on her troublesome problems. I am told that during his four weeks' sickness eight years ago he read every one of Scott's novels.

Whenever Judge Carpenter made short diversions from his professional and judicial work, he became a delightful companion. He was full of humor and delightful good nature. Whenever, on such occasions, a story was suggested as a good one, his countenance would beam with delight even before the story was begun.

For the past six or eight years, whenever I have been at Concord and he was at home, he regularly called. I remember his visits with immeasurable pleasure. He was on such occasions always in good cheer, and his appearance was as refreshing as the appearance of the early summer breeze from the north.

New Hampshire justly points with pride to her chief

justice line: Weare, Samuel Livermore, Bartlett, Pickering, Olcott, Smith, Arthur Livermore, Richardson, Parker, Gilchrist, Woods, Perley, Bell, Bellows, Sargent, Cushing, Doe, and Carpenter. I believe that the bar and the people of New Hampshire justly appreciate the conscientious and unremitting life-toil of Doe and Carpenter, the two last of the line, who have been so much in the lives of those of this generation. I believe that as years go on and the bar and the people come to realize more fully than they do now, the blessings which must perpetually flow from the beneficent emancipation of legal controversy from the intricacies and the hardships of the older system, when litigation might be prolonged interminably, the character, the foresight, and the fame of each will grow into brighter appreciation, and that their names will forever stand among the foremost in New Hampshire's distinguished chief justice line, and among the great judges of their day and generation.

On the 9th day of March, 1896, while journeying from the Southwestern states toward Mexico, within less than two hours after the event, I read in a newspaper that Chief Justice Doe died suddenly at the railroad station in Rollinsford while on his way to the law court in Concord. In the following days, under a tropical sun, while witnessing something of the weird and mysterious intricacies and workings of the Mexican judicial procedure, the thought was ever present, How beneficent are our home institutions and the administration of our legal rights, and what a blessing it is that Judge Doe has lived to simplify and improve what was before a beneficent judicial system. Upon my return, Judge Carpenter, with an overflowing heart, told me of the shock he received upon opening and reading a telegram which announced the death of his associate, and of the grief and sense of personal loss that overpowered him. He also talked of his journey to England in pursuit of needed rest. And in the renewed fulness of his powers, he talked of his future work.

A little more than two years later a letter from a friend of Judge Carpenter came to me in London, telling of his sudden death at his home in Concord. There, at the seat of common law and equity, depressed by the consciousness of the loss of a great judge, whom I had counted as a friend, his name seemed inseparable from the venerable memories associated with Westminster Hall, "the Mecca of English law and justice," and from the historic Inns of Court, and from the memories of Coke, Bacon and Blackstone, and of Hobbs, and Langley, Eldon, Bentham, Mackintosh, Romilly, Brougham, and Mansfield. Here it was that these great men walked and worked. Here it was that the rule of equal law was originated and developed and advanced in the interests of universal justice. Judge Carpenter's learning and his familiarity with the history of the origin and development of the English system, with his appreciation of the progressive forces of the law, and the generations of English lawyers and judges who had used such force to advance its excellencies, seemed to make him a part of the historic whole. How well he understood the priceless and enduring principles, which regulate the conduct, and furnish the security of so many millions. Knowing the genius and the scope of the English system, his life was to hold firmly to its fundamentals, and under the inspiration of our liberalized institutions and upon conservative lines, to perfect and adapt its priceless principles to the ever-increasing demands of advancing civilization. How well he succeeded in the work to which he dedicated his too short life, we all know.

So it is that in death men live.

We sometimes see men with intellect so clear and alert and with body so vigorous and energetic, that we cannot associate them with the idea of death; yet all perish from the earth, the strong and the weak alike; all alike disappear from earthly view. When the light of the strong man goes out as easily and mysteriously as the shadows disap-

pear, we marvel at the Providence, which in the great scheme of dissolution and redemption levels all earthly life. When we see the strong men from among us go out, when we see the great pillars of strength suddenly yield and disappear, as quietly and mysteriously as the mist, we marvel again, and are wont to say, "From whence comes the strength to supply the loss?" But let us not dwell too much in the past. The past is not lost, it is not dead. Yet however much we may dwell upon it, the man of the past cometh not back to this life. His example, his teachings, live; and, building upon them, we must rely upon the men of the present to carry on our profession and uphold our system of jurisprudence. We mourn the loss of our departed friends, but in our grief, I will close with the optimistic thought, and the admonition of another: "Look not mournfully into the past. It comes not back again. Wisely improve the present. It is thine. Go forth to meet the shadowy future, without fear, and with a manly heart."



ISAAC W. SMITH.

ISAAC WILLIAM SMITH.

BY HENRY E. BURNHAM, OF MANCHESTER.

Isaac William Smith, son of Isaac and Mary (Clark) Smith, was born in the town of Hampstead in this state May 18, 1825. He was a descendant on his father's side of Samuel Smith who emigrated from England and was one of the early settlers of Haverhill, Mass. His maternal ancestry in this country begins with Nathaniel Clark who settled in Newbury, Mass.

His father was a country merchant who for many years was engaged in business in the town of Hampstead, and was universally respected and esteemed.

His mother, who died when he was only eight years of age, is represented to have been a lady of rare good sense, of winning manners and of beautiful character.

Early in his boyhood life he manifested a fondness for books and study, and his father, wisely appreciating the value and importance of a liberal education, gave him encouragement and willingly made the sacrifice of providing for his son all the advantages which could be derived from the academy and college.

At the age of fifteen he began his preparatory studies at Phillips Andover academy, and after graduating from there he entered Dartmouth college in 1842. Completing his college course in the class of 1846, he began his legal studies in the office of William Smith, Esq., at Lowell, Mass. Remaining there about a year he then came to Manchester and entered the office of Judge Daniel Clark, where he continued his studies until his admission to the bar, July 9, 1850.

Subsequently he was a partner of Hon. Herman Foster for about two years, and was associated with Judge Daniel Clark as his partner for five years. During a part of 1876 and 1877 he was in partnership with Gen. John H. Andrews, under the firm name of Smith & Andrews.

Like many other young men he became, soon after his admission to the bar, interested in political affairs and held various offices in the city government of Manchester. He was president of the common council in 1851 and 1852; city solicitor in 1854 and 1855; mayor of the city in 1869, and was appointed judge of the police court in 1855, continuing in that office until his resignation in 1857.

In 1856 he was a delegate to the National Republican convention which nominated Fremont and Dayton.

In 1859 and 1860 he represented his ward in the legislature of the state, and in 1862 and 1863 was a member of the state senate, and served in both branches as chairman of the judiciary committee. In the latter year he was nominated for the presidency of the senate but was defeated by a combination with senators of the opposing party.

In 1863 he was appointed by President Lincoln assessor for the second internal revenue district of New Hampshire and held that office until 1870.

In the constitutional convention of 1889, of which he was a member, he took an active and influential part and was by many favorably considered for the presidency of that body.

Doubtless the allurements of political life had some charm for him and might well have tempted any man possessed as he was of high aspirations, but he still clung to his chosen profession and always returned to the practice of the law or to his judicial duties with the thought and feeling, no doubt, that here was the more congenial and appropriate field for the exercise of his intellectual powers.

Judge Smith was in many respects admirably qualified for the performance of political duties. He regarded every

office which he held as a sacred trust, and gave to the discharge of its duties the full measure of his ability with a zeal, a loyalty, and honesty of purpose which made him a useful and honorable public servant.

Although a busy man in the practice of his profession and in the office of associate justice of our court, he yet found time to devote to other interests. As a member of the New Hampshire Historical Society he has contributed to the valuable researches of that organization.

He held at different times important financial trusts and was officially connected with many business and charitable institutions to which he gave much attention.

At the time of his decease he was president of the New Hampshire Bible Society and the Congregational Club.

His attachment and loyalty to Dartmouth college never ceased nor waned from the time of his graduation, but rather seemed to grow more ardent and devoted as his years increased. He gave to his beloved alma mater a liberal share of his time and services and received the highest honors from this venerable institution. He has held the office of president of the Alumni Association and of the Phi Beta Kappa Society, and has been a trustee since 1885.

In recognition of his high standing in the legal profession, of his judicial rank and of his worthiness as a man, the college conferred upon him in 1889 the degree of LL. D.

Judge Smith was fortunate in his home life. He was united in marriage August 16, 1854, to Amanda W., daughter of Hon. Hiram Brown, the first mayor of Manchester. Eight children were born to them of whom seven have survived him.

It is, however, concerning Judge Smith as a lawyer and as an associate justice of our court that we are chiefly interested at this time.

In the practice of his profession he was distinguished for

the care and attention that he gave to every matter entrusted to him, and for the zeal and fidelity with which he labored for his client's interest. If his opinion was sought upon any doubtful question of law, his conclusion would be reached and his decision given only after the most painstaking consideration and after the most thorough and exhaustive examination of all the accessible authorities bearing upon the question.

If a cause was to be tried by him before any tribunal the facts and the law would be carefully ascertained and his preparation would be elaborate and exact.

In the presentation of his client's cause he was remarkable for his clearness of statement, accuracy of judgment, and the logical force of his argument.

He attained success as a lawyer by his willingness to pay the price of success in unremitting toil, in a faithful endeavor to make the most of every opportunity, and in the fullest use of all his intellectual powers.

Judge Smith was appointed an associate justice of the supreme judicial court Feb. 10, 1874, and upon the reorganization of the court in August of that year, was appointed a justice of the superior court of judicature. He continued as a member of that court until it was reorganized in August, 1876. He again received a judicial appointment July 24, 1877, and remained an associate justice of the supreme court until his retirement May 18, 1895, by reason of the limitation of age.

As a member of our supreme court, in which exalted place he was best known, he illustrated many of the qualities which should ever characterize the incumbent of this great and honorable office.

He was an upright man, honest in every thought and purpose. No stain ever marred and no shadow was ever cast upon the judicial ermine by reason of any act or word of his.

He was impartial. No motive of fear or favor controlled

or influenced him. No ties of affection or friendship and no hope of reward ever swerved him from the path of rectitude and honor.

He was always conscientious and faithful in the discharge of the duties of the great trust which had been committed to him by the state. The exercise of power which belonged to his office gave him no pleasure in itself, but rather was attended by extreme anxiety lest he might err and some wrong or injustice be done to a party in the cause before him.

In the preparation of his opinions upon the questions of law assigned to him, Judge Smith relied upon the authority of adjudged cases. He believed in abiding by the former landmarks, and always made the most exhaustive and persistent effort to obtain from this and other jurisdictions all the light possibly to be derived from former decisions.

The amount of work which he did was truly marvelous. His opinions appear in all the reports from and including volume 54, and number more than five hundred.

As a presiding justice at trial terms he possessed exceptional qualifications. His judicial temperament was illustrated in his charge to the jury. His statement of the issues involved in the trial and of the law applicable thereto was always clear, concise, and easily understood. If he entertained an opinion as to the merits of a cause he was careful not to give any intimation of that opinion to the jury. It was the exclusive province of jurors, as he believed, to determine all questions of fact, while the court could only guide and instruct them in matters of law.

The members of the bar, young and old alike, always received from him fair and courteous treatment. Patiently he would listen to all that might be said on either side of the question which he was to determine, and fairly would he weigh and consider the evidence and arguments presented with no prejudice against or favor toward either client or counsel.

He was always ready and willing to do his share of the hard and irksome labor of the trial terms, and having the respect and good-will of the lawyers attending upon the court his terms were uniformly successful in the disposal of causes.

When his term of judicial office expired Judge Smith at once resumed the practice of his profession. He was then in the full possession of his mental powers and he undoubtedly looked forward to many years of useful and honorable labor.

Business came to him in even unexpected volume. His retainers in important causes were numerous. His advice and assistance were sought by his brother lawyers. His former clients returned to him and many others, appreciating his legal ability, engaged his services.

His reputation as a lawyer of long experience and great learning, and the confidence universally entertained in his perfect integrity and unbiased judgment, brought to him a large number of causes in which he acted by agreement of parties or appointment of the court, as referee.

It may be truly said that these years subsequent to his judicial service were among the happiest of his life. He manifestly enjoyed the business in which he was engaged. His hours of recreation were given in larger measure than before to social enjoyment, and to the reading of current literature, and all who were privileged with his intimate acquaintance found in him a most genial and social companion. But these happy days were not to last. The time came, as it comes to all, when his work must be completed, when toil and recreation must cease, and life must end.

On the 28th day of last November he went to his office for the last time. He had complained of slight illness, but no one anticipated the dread result. After a short time in his office, where he had been alone, he was found seated in his chair, his head resting upon his arm and life extinct. His work was done. Surrounded by his books and many

papers which bore the evidence of his toil, and with the address of his daughter living in a distant state, half completed, he had passed away.

Painlessly and without a struggle, as a child falls asleep, he had entered upon eternal rest.

“ No earthly clinging,
No lingering gaze;
No strife at parting,
No sore amaze;
But sweetly, gently,
He passed away,
From the world's dim twilight
To endless day.”

At his funeral, which was observed in the quiet of his home, as he would have had it, surrounded by a loving family, by the members of the court which he had honored, by classmates who loved him, and by brother lawyers and citizens who respected him, the last tributes were paid to his memory.

The president of his college, beloved by every friend of Dartmouth, spoke words of fitting eulogy, and the pastor of his church, with which for many years he had been in full communion, with a depth of feeling and a painful consciousness of loss, gave expression to the sentiment of love and esteem which pervaded the whole community.

Others may have filled a larger place in the public mind, but none has given to important trusts a larger measure of fidelity and unsparing effort, none has performed great duties with a purer mind or loftier purpose, and none has been more devoted to our profession and to its great principles of truth and justice than the subject of this sketch.

The state which honored him will bear the name of Isaac W. Smith in grateful remembrance as that of an upright judge. The city of his adoption will cherish his memory as that of an honorable and public-spirited citizen, while his home circle and his multitude of friends deeply attached to him will remember him as a true and faithful husband and

father, and a man whose life and character were enriched with the noblest qualities of mind and heart.

Wisely may we emulate his industry, his zeal and devotion to duty, and as the recording book is closed, we may appropriately say,

“He has done the work of a true man.
Crown him, honor him, love him.”

JOSHUA G. HALL.

BY J. S. H. FRINK, OF GREENLAND.

I feel that the task of preparing some brief memorial of our lamented brother, Joshua G. Hall, should have been assigned to some one from his own county, more worthy to do justice to his sterling, but unostentatious, qualities.

The superficial student of his life's history will, in future generations, readily find that he was born in the town of Wakefield in the year 1828; that his parentage was of the best and most thrifty class of that intelligent agricultural community, and that his ancestry in this country can be traced for more than two centuries to one of the most prominent settlers of that city, which he in early life adopted as his home, and in which he died; that he graduated from Dartmouth college; prepared himself for the profession of the law; and that during almost the entire period, from his admission to practice to his death, he pursued his chosen profession in the city of his adoption; that he attained eminence in his profession; and that his public services have been important, varied, and almost continuous.

It falls to the lot of but few members of our profession to have been so conspicuously occupied, in the discharge of important official duties, as Mr. Hall; and none has borne the ordeal with more fidelity, and consequently less criticism.

The mere enumeration of the public offices he has holden, at the bidding of his fellow-citizens, affords a most pregnant testimonial to his worth and capacity.

The order in which he held these unsolicited public positions shows how steady was his growth in the public confidence.

The solicitorship and mayoralty of his city; the solicitorship of his county; frequent membership in the house and senate of his state; the district attorneyship of the United States for his district; membership of the Forty-sixth and Forty-seventh congresses; and oft-repeated positions of trust conferred upon him by the supreme court of the state, present a record of public duties which no man of ordinary ability, or equivocal honesty, could have discharged in a manner constantly promoting advancement.

Such is a brief historical sketch of the life of Mr. Hall, but it presents a very imperfect history of the mental and moral qualities of the man.

Many of us will never forget his dignified presence as he walked the streets, nor his impressive manner as he addressed a tribunal.

Every movement and word marked the intense thoughtfulness and earnestness of the man.

There was nothing even approaching triviality in his conduct or speech.

He was deliberate, but not heavy; his words were well considered, but not platitudinous.

Language with him was used to express and not conceal thought.

He meant what he said, and he said what he meant to convince, not mislead his auditors. He was so honest in his thoughts that he could not be dishonest in words.

When such a man, whose whole life was a living testimonial of uprightness in conduct and sincerity in speech without trick of phrase, but in language concise and well considered, addressed an intelligent tribunal, his words could not fail to carry at least the conviction, that what he said was worthy of most careful consideration.

As were Mr. Hall's public utterances, so was his confidential conversation; wise, frank, but conscientious and guarded.

He was a man of strong friendships, and equally strong

antipathies. He kept, however, a strict guard over his tongue lest he might unnecessarily do injustice to one who did not command his approbation. If he distrusted a man he might, and generally did, avoid association with him, but he was careful not to influence the conduct of others towards him. He was, perhaps, sometimes intolerant, but never vindictive.

I should do injustice to a most charming quality of Mr. Hall, if I conveyed the impression that he never relaxed and was always austere and formal.

Few men were more companionable than he. He had known a great many persons both in private and public life, was full of entertaining reminiscence and the numerous anecdotes he told of them—always chaste and pure and couched in language almost classic—abounded with a quiet humor which embellished and illustrated his tales, in a most fascinating manner.

No one was keener to see the point of a story than he and few could present one with greater felicity.

Although the subject of our sketch was much in public life, yet I do not think the favors he received were the reward of the politician, but an award of merit to the private citizen.

“All parties had the same opinion of his abilities; few had any distrust of his motives.”

As for himself he was too modest to be ambitious for reputation, but regarded his place merely as a duty.

He loved the law, but I never felt that the ways of the politician were congenial to him.

Never having affiliated with him politically, I ought not to assume to speak of him as a political partisan, but I have had the feeling that he was too independent and intractable to make a subservient party man. I do know, however, that he was pre-eminently a good lawyer.

He bore the test of the useful and honored practitioner, “trusted by his clients and respected by the court.”

I may add, he was industrious and as a result learned, of sound judgment with unusual powers of analysis, pre-eminent for his love of justice, clear-sighted and direct of speech.

Mr. Hall's remote ancestor was Deacon Hall of Dover Point.

I think *our* Deacon Hall must have inherited from his ancestor, with his ecclesiastical title, his religious convictions.

He was a New Englander of the strictest Puritan type; he knew much of church polity and dogmas, discussed creeds and articles of faith *con amore*, hated ritualism and popery like a Roundhead, but did not object to association with a cavalier, and with a "pitying tear" implored the divine mercy upon a non-evangelist.

If he seemed sometimes intolerant in his religious principles, he was always true to his convictions.

Of Mr. Hall's domestic life there can be no criticism. It was above reproach. His family, his church, and his profession he loved with a singleness of heart that knew "no change or shadow of turning."

He has worthily paid to the community his debt of public service and private example.



CHARLES B. GAFNEY.

CHARLES BENJAMIN GAFNEY.

BY LESLIE P. SNOW, OF ROCHESTER.

Although it is not well defined, and few of us are really conscious of entertaining it, a belief has nevertheless existed in all ages and among all people that deceased friends are in some way acquainted with the rites which are performed in memory of them. If this belief were well-founded, and Brother Gafney could make any suggestion to us at this time, it would be in the interest of brevity and rugged honesty in what we should say of him. But a review of his life convinces me that one cannot at the same time be brief, and truly just to his memory.

I am indeed sorry to say that I enjoyed an intimate acquaintance with Judge Gafney only during the last seven years of his life, as from that seven years' experience I am sensible that there were practical and invaluable lessons to be gathered from an association with him that can never be taught in schools nor laid down in text-books.

Because of this comparatively brief acquaintance, however, I have to acknowledge my indebtedness to others for much of the data relating not only to his military but to his earlier professional life.

Charles B. Gafney was born at Ossipee, N. H., September 17, 1843. He was an only child and was left an orphan at the death of his mother when a boy of only four years. As an orphan boy, however, he found sincere friends among the good country folk of his native and adjoining towns, forming friendships which in his later and successful years, he never forgot. Among his staunch friends was his guar-

dian, Sanborn B. Carter, Esq., of Ossipee, then one of the leading members of the bar of Carroll county. He was under the care of an aunt for a time, and from the age of 11 to 14 lived at the home of Jacob Ballard of Wakefield. His inheritance consisted principally of a strong physique, a generous, noble-hearted disposition, and a vivacious temperament.

He was educated at the public schools in Ossipee, at the academies in Sandwich, N. H., and Lebanon, Maine. He then pursued the study of law under the tutorage of Mr. Carter, his guardian, and with Hon. Charles W. Woodman, of Dover.

Although less than eighteen years of age when the Civil War broke out, he was early to enlist. On September 27, 1862, he was enrolled in Company A, Thirteenth New Hampshire Volunteers, under the command of William Grantman. He was enlisted by John W. Sanborn, who was acting as recruiting officer, with whom he then formed an acquaintance which ripened into a friendship which endured during his life. He was mustered into the service as second lieutenant. He was promoted to be first lieutenant June 1, 1863. He participated in battles of Fredericksburg, Drury's Bluff, Cold Harbor, and in numerous other important engagements, and was seriously wounded at the Battle of Petersburg, June 15, 1864, by a minie ball which he carried in his thigh for seventeen years.

When his wound had partially healed he returned to the front and was aide to Generals Roulston and McCullom of First division, Eighteenth Army Corps, and to General Ripley of First brigade, Third division, Twenty-fourth Army Corps. On May 30, 1865, he was commissioned captain for gallant conduct and so mustered out at the close of the war.

Although constantly reminded of his military experiences by the presence of this wound for so many years, he seldom talked of his military exploits except in some jocose

way. Notwithstanding his creditable record as a soldier he never spoke boastingly of it. He often expressed no little contempt for those, who, having performed little service for their country, sought preferment by great claims of loyalty.

Although the junior of his fellow-officers in the service, his comrades bear willing testimony to his superiority as a commanding officer and his courage and gallantry as a soldier.

At the close of the war he accepted a position as clerk in the treasury department at Washington. There he formed the friendship of Hon. A. H. Cragin, then senator, and Jacob H. Ela, a congressman from this state, and many other eminent public men, gaining much valuable experience which was of practical use to him later in life. He served for several years as clerk of the Naval Committee of the United States Senate, of which Senator Cragin was chairman.

During this period he pursued his study of law at the Columbian Law school and graduated from that institution in 1868. By reason of the friendship formed with Hon. Jacob H. Ela he came to Rochester in 1871, and formed a copartnership with Joseph H. Worcester for the practice of the law, for the next two years dividing his time between Rochester and Washington. After 1873 he gave his exclusive attention to the practice of his profession until January, 1890, when he accepted the position of secretary to Hon. Frank Jones, president of the Boston & Maine Railroad, and spent the most of his time until October, 1893, in Boston. He then returned to the practice of his profession, and in May, 1896, was appointed judge of probate for Strafford county, which position he held until his death. The writer was associated with him in the practice of the law after 1893.

He was twice married. His first wife was Mary Ellen Grant, of Ossipee. She was an invalid and a great sufferer many years prior to her death in 1888. His second wife was Ida A. Peavey of Farmington. She, too, for the last few years suffered from ill health. He was very fond of

home life, and the cloud of sickness rested heavily upon him. But amidst it all his kind and patient cheerfulness was well worthy of remark and emulation.

At the time of his appointment as judge of probate his friends had begun to notice that his health was failing him. At about the same time he began the construction of his elegant residence, the cares incident to which, together with his official duties, and the sickness of his wife to whom he was very much devoted, hastened the end. Overwhelmed by an incurable disease, it was pitiful to see the effort which he made to resist the forces which would have compelled a less brave and determined man to at once surrender to the inevitable.

Within eight days of his death and on the last day he was able to sit up, against the advice of his physicians and friends, he held his regular term of probate court.

He showed much interest in secret orders, and especially in Masonry. He was raised a Master Mason by the Charter Oak lodge of Masons at Effingham, N. H., on the day he became twenty-one years of age. He was made a Knight Templar in the Washington encampment; took the Scottish Rite degrees of Masonry to the 32° at Nashua, N. H., being a member of the Edward A. Raymond Consistory. He was one of the charter members of Temple Chapter, Royal Arch Masons, and became a member of the Palestine Commandery of Knights Templars upon its establishment at Rochester.

He was a member of Kennedy lodge, I. O. O. F., at Rochester. He was a member of the Order of Elks at Dover. In military orders he belonged to the Sampson post, G. A. R., and was a member of the Massachusetts Commandery of the Loyal Legion.

Aside from his professional duties, he found time to devote to business enterprises. He was the principal owner and treasurer of the A. L. Hodson Co., which did a large business in the manufacture and sale of lumber. His well

recognized practical mind and methodical business habits brought to him the handling of numerous large trust estates. He took an active part and was one of the principal movers in the organization, reorganization, and management of numerous large corporations, including banks, banking companies, water-works companies, lighting companies, insurance companies, and business corporations, too numerous for mention at this place.

He was clerk of the Manchester & Lawrence R. R.; he was one of the trustees of the Norway Plains Savings bank; a director of the Rochester Aqueduct Co., Rochester Loan & Banking Co., Portsmouth Trust and Guaranty Co., Wolfeborough Loan & Banking Co., Granite State Fire Insurance Co., Laconia Car Co., as reorganized.

As a trial lawyer and advocate Brother Gafney was a distinguished member of the bar in southern New Hampshire. Until his last sickness began to come upon him in the early part of 1896 he was a busy man in his profession, and enjoyed a practice remunerative beyond the average attorney's of our state.

He was by temperament and disposition especially adapted to the practice of his chosen profession. No one knew human nature better than he, and he seemed to understand it without study. He read a man's character and disposition almost by intuition. He was the quickest man to grasp the facts in a case I ever saw. With a few questions he got at the vital points. Endowed with a clear, practical mind and with quick perception, broadened by experience, the salient points seemed to come within the horizon of his vision before others could see them.

Having gathered the facts he was as fertile in his expedients by way of remedy. With an inventive mind trained by a long experience with men and affairs, full of resources, he seemed at once to be able to suggest the way out of a difficult situation. His quick comprehension of both the facts and the remedy seemed to be alike intuitive.

His independence and integrity won for him the confidence and patronage of business people. He attained especial distinction in his profession from his association with large interests, and it was in this that his wisdom as a counselor, his sound judgment, and his fidelity to his friends gave him a prestige among the leading men of our state. His especial strength in these larger affairs lay in his great tact and executive ability. The confidence of his associates and clients in these qualifications led all parties interested to seek and give heed to his suggestions.

Punctuality was a cardinal rule with him. What he had to do he wanted done right, and wanted to know that it was completed. Full of courage and hope, he brought enthusiasm and zeal into every cause he undertook, and was thoroughly devoted to his client's interest.

Endowed with a commanding presence, he was a forcible speaker; truly eloquent in a cause which enlisted his sympathies, but relentless in his arraignment of his victim when he scented wrong or oppression. He had a way of saying things that convinced one that what he said he meant, and that what he professed he believed and felt. At all times he was a strong man, with an earnestness that carried conviction,—vigorous in his language, sometimes homely but always pertinent in his illustrations, with occasionally a story earnestly and amusingly told to fit the case.

I cannot better explain the impression which he usually made on his associates than by quoting from a letter received from a prominent member of our bar in reply to the announcement of his death:

"Ever since my acquaintance with him I regarded him as a strong man—a modest man, and yet when occasion required, a brave man. He was frank and open when frankness was required. He well knew the springs of the human heart, the motives prompting one to action. He often held the key that would unlock difficult matters because of his great knowledge of human nature."

Notwithstanding his admitted executive ability and knowledge of public affairs with which he kept constantly in touch, and although in a way one of the most public men in our state, I believe he never held a public office by election. He never sought political preferment but, on the other hand, frequently refused to enter the arena of political contests for himself, preferring to take the rôle of Warwick to that of king, and at all times played his part well. He who had his support had a loyal and strong force in his favor. His influence in New Hampshire politics as well as his power as an organizer in legislative matters is too well known to the New Hampshire bar to need comment. His large acquaintance in the state and his ability to command others gave him an especial strength in this direction.

His politics was Republican, and he was chosen unanimously by his party associates as a delegate to the last national convention.

He had a sympathetic heart and was well known as a public-spirited citizen. He was ~~always~~ generous towards individuals and charitable objects that needed his aid. If he was satisfied an eleemosynary object was worthy, his giving was spontaneous, and need not be solicited.

He manifested great regard for the people not only of the towns of his nativity and early residence, Ossipee and Wakefield, but for Carroll county as a whole. He did many acts of charity in his lifetime, and left the residue of his estate, for the benefit of the people of his native county.

No one had a better friend than Charles B. Gafney, and his friendship was invaluable to one whom he liked. He was very strong in his likes and dislikes. He was especially kind and considerate to the younger members of the legal profession. He seemed to welcome an opportunity to administer good, wholesome advice, and his earnest good wishes seemed to be pervaded with a feeling of genuine good-will. Professional envy and jealousy found no lodgment in his heart.

He had a warm social side to his nature. He was very fond of, and always had an earnest greeting for, his friends, of whom no man had more. The warm pressure of his hand, the kindly and earnest greeting of his lips, were an inspiration to all who were accustomed to his companionship. He was never so happy as when sitting in a circle of congenial friends discussing current events or past reminiscences. On the other hand, he never liked a crowd, disliked publicity of any kind, and was always displeased with newspaper notoriety. Himself a good story teller, he appreciated a good joke or story, and had a caustic way, not always free from profanity, of stating facts which kept his listeners in good humor. No one could sit in his presence while he was indulging in a hearty laugh without joining him. Of a genial disposition, always full of courage and hope, everybody about him was kept good-natured.

Briefly summing up his characteristics,—he was a man of good native intellect and strong common sense, endowed with an excellent memory and ready wit that always hit the mark; with honesty and industry as controlling principles of his conduct, fidelity to friends, impatient of delay, zealous in all his undertakings, detesting affectation or sham, having a heart overflowing with generosity and strong human kindness,—such a man as is justly honored in life and lamented in death.



Henry P. Colpe

HENRY PEARSON ROLFE.

BY SYLVESTER DANA, OF CONCORD.

In making a brief sketch of the career of the late Henry P. Rolfe, I have availed myself of whatever aids I could find, adopting the ideas and oftentimes even the language of himself and others.

The ancestry of Mr. Rolfe was of more than ordinary interest.

Soon after the close of the old French war, his paternal grandfather, Benjamin Rolfe, came to Boscawen from Newbury, Massachusetts, and built his bark cabin in the primeval forest on the highest land in that town, which then comprised the town of Webster.

Accompanied by his wife, Lydia Pierson Rolfe, on a single horse they carried an axe, shave, gouge, pod auger, hoe, and other tools and utensils. Those were pod auger times.

From Penacook Mrs. Rolfe returned to Newbury, while her husband took his camp kettle and such other articles as he could carry on his back, and sought out his future home, in the northwesterly part of the town since known as High street in Boscawen. Here he made his "clearing" and returning to Newbury in the fall, resumed his occupation of a ship carpenter.

In the course of a few years he erected the first frame house in old Boscawen, and a barn, dug a well, and in 1772, brought thither his wife and five children from Newbury.

"In this house," said Mr. Rolfe at the one hundred and fiftieth anniversary of the settlement of Boscawen and Webster, "my father (Benjamin Rolfe, Jr.) was born in 1773. In this house all the days of my childhood were passed. All

the first recollections of my youth, after more than half a century, turn back to the spot where I first drew breath, and where the opening buds of life cheered me with their fragrance."

The mother of the subject of this notice was Margaret Searl Rolfe, the daughter of Rev. Jonathan Searl, the first settled minister in Salisbury, and his maternal grandmother was a daughter of Jethro Sanborn, a sea captain who spent a large share of his fortune to feed our suffering Revolutionary soldiers at Valley Forge, in exchange for worthless Continental money.

His mother and Daniel Webster were both pupils under Master Tappan, and for a time were school-mates.

She graduated at Atkinson academy, and taught school some nine years, a part of the time in the Webster school district in Salisbury, where she renewed her acquaintance with Daniel, who had recently returned from his labors as preceptor of Fryeburg academy, and who freely informed her of his struggles, his ambitions, and his determination never to be guilty of an unworthy act.

Mr. Rolfe, the subject of this notice, was born February 13, 1821, was raised on a farm and his parents being poor, his education was limited to six months yearly in the district school in the little brick schoolhouse, where he said he drank some "shallow draughts."

From ten to sixteen years of age he was allowed only three months' schooling during the winter terms. But the winters of his sixteenth and seventeenth years he spent in the woods with his father, driving a lumber team. From that time till he attained twenty years of age, he enjoyed nineteen weeks of schooling away from home, five at Franklin and fourteen at Salisbury academy.

Notwithstanding these scanty privileges, Mr. Rolfe began teaching his first district school at the age of eighteen, which he followed for nine successive winters with unvarying and ever-growing success.

When nineteen years of age his father's family removed to the town of Hill.

In 1841, being twenty years of age, Mr. Rolfe commenced his preparatory studies for admission to college at the New Hampton Institution, where he studied three years, and entered Dartmouth college in 1844. The late Professor Patterson was a classmate, with whom Mr. Rolfe sustained relations of intimate friendship.

That college was then the "poor boys' college," as it was called by the late Chief Justice Sargent. It did not then require a small fortune, the price of an ordinary farm, to go through college. Tuition including "incidentals" was then from thirty-one to thirty-five dollars annually, now one hundred dollars. Board and other expenses have also vastly increased, so that an absolute inhibition to obtaining a liberal education at that college would have barred out Mr. Rolfe and a multitude of other bright young men, including Daniel Webster himself, had such huge figures confronted them in their day.

This digression is made for the benefit of the few trustees of that college present with us to-day.

I am aware that the prices of many commodities have considerably advanced, but by no means threefold their original value.

Being dependent upon his own efforts to defray the expenses of his education, Mr. Rolfe taught school during his preparatory and collegiate courses for several years on Cape Cod and later at Dartmouth, Massachusetts.

While in college Mr. Rolfe was exceptionally punctual in discharging all of his duties. He was never absent during his senior year from a recitation, lecture or other exercise, never asked for an excuse and was ever at his post. His student life was eminently successful, both as to mental discipline and scholarly attainments. He graduated in 1848, with the highest respect of the faculty and the warmest attachment of the members of his class. He also received

a very commendatory letter from the president of the college.

Soon after his graduation he entered the office of Hon. Asa Fowler at Concord and made good progress in his legal studies. Being in need of money he obtained the position of a deputy sheriff and did considerable business in that capacity. On one occasion a boisterous fellow came into the court-room and disturbed the proceedings. The presiding Justice ordered Deputy Rolfe to remove him. The contumacious fellow demurred and showed fight, then the deputy grappled him and, after a vigorous and amusing tussle, out he went.

On another occasion Deputy Sheriff Rolfe was not quite so successful.

A young man of more than ordinary intelligence and education in the western part of this county, undertook to raise the old state bank-bills, ones to tens, twos to twenties, etc. He had a confederate who passed them wherever opportunity was presented for all sorts of goods, wares, and merchandise. The confederate was soon detected and became the state's evidence against the young man, who engaged General Pierce to defend him. The first day of the trial, before the old court of common pleas, was occupied in hearing the testimony of a few witnesses, chief of whom was the confederate, who gave a long and apparently truthful account of his relations with the young man implicating him fully in his dishonest transactions. The countenance of the young man fell, and he became thoroughly alarmed at the prospective result; so that when evening came he paid off his witnesses and boarded a night freight train going toward Canada.

The trial ceased, and Colonel George, then county solicitor, called upon the bail of the young man to respond. They obtained a continuance, and employed Sheriff Rolfe to go to western New York, where the young man had been located, and bring him back to New Hampshire. Rolfe

went duly armed with requisition papers, and with the aid of a local officer entered the school-room where the young man was teaching, and placing manacles upon his wrists, they put him on board an East bound train, Rolfe occupying a seat immediately in his rear.

The road was long and wearisome and the night wore slowly on, and Rolfe, overcome by his travels, fell on sleep. Not so the young man, who, scenting a state's prison, watched his opportunity, and quietly walked out of the car, going at a rapid rate, and jumped down an embankment, and never was seen again in New York or in New Hampshire by anyone who knew him. Rumor says that he subsequently settled with his bail, and went to one of the Western states, where, I am sorry to say, he became a lawyer of the most unscrupulous kind.

Mr. Rolfe was admitted to the bar in May, 1851, and immediately opened an office in Concord. He soon formed a partnership with the late Anson S. Marshall, Esq., and they for several years were engaged in a full practice. The partnership was at length dissolved, and Mr. Rolfe opened an office and did business by himself.

In 1852-'53 he was elected a member of the board of education of the Union School district, of which he was chairman during the last year. In that year he was elected as a Democratic representative to the legislature by the town, before it became a city.

In 1859-'60 he was the Democratic candidate for senator from the Concord district. A member of the nominating convention of 1860, who had resided at the South, introduced a set of ultra pro-slavery resolves, which could hardly have been surpassed by a like convention in South Carolina or Mississippi. The convention passed them, and Mr. Rolfe, to his credit, refused to be its candidate upon such a platform. Thereupon the convention reassembled, and rescinded the obnoxious resolutions.

Mr. Rolfe was a candidate for an elector on the Douglas ticket in November, 1860.

In 1861 the War of the Rebellion commenced, and Mr. Rolfe took a decided stand in favor of the Union, and became identified with the Republican party, as the one more likely to insure its preservation.

In 1863-'64 he was elected as a Republican representative from ward five to the legislature.

Those were stormy years in national affairs, and hardly less stormy, so far as Concord was concerned, in the New Hampshire legislature, for during those years the removal of the state capital to Manchester was strenuously urged. Mr. Rolfe was on the large committee having the subject in charge, and did valiant service in behalf of his adopted city.

In 1866 he was appointed by President Johnson postmaster of Concord, but his commission was withheld because he refused to assist in the election of Democrats to congress.

President Grant, in 1869, appointed him United States attorney for the district of New Hampshire, and he held the office for about five years.

In 1878, by the appointment of the governor, he was a member of the commission concerning the encroachments upon the waters of Lake Wiunipесаukее, and discharged his duties very satisfactorily to all concerned.

In the spring of 1882, Mr. Rolfe nearly lost his life by the kick of a vicious horse upon his forehead, destroying the sight of one eye and for a long time entirely prostrating his nervous system. I think that no other member of the bar in New Hampshire could have endured a like calamity and have survived a month afterwards, but his stalwart frame and good habits carried him through, although several years elapsed before he could be called well, and, indeed, some of the results of the accident followed him through life.

Mr. Rolfe was happy in his domestic relations. He married, Nov. 22, 1853, Mary R. Sherburn, daughter of the

late Robert H. Sherburn of Concord, by whom he had five children. The three first born died in early childhood or in infancy. The last two were sons. Robert H. Rolfe, a graduate of Dartmouth college in the class of 1884, was colonel of the New Hampshire regiment in the late Spanish War, and is now Assistant Inspector-General, with the rank of Major of volunteers, on the staff of Major-General Brooke in Cuba. The other son, George H. Rolfe, is employed in the Concord freight office of the Concord & Montreal Railroad. His wife died in 1892, greatly lamented.

As a lawyer, Mr. Rolfe had, in addition to his legal attainments, many superior qualifications. He could talk fluently and to the point, could impress a jury more effectively than most members of the bar, and exercised great judgment in dealing with parties and witnesses.

- In a breach of promise case, in which he represented the plaintiff, the defendant, who was shown to have been guilty of gross misconduct, was treated by him very gingerly. I asked Mr. Rolfe how he could refrain, in his argument, from pitching into the fellow, and he replied: "Ah! I went in to win, and I did not care to deal with the defendant as he deserved, lest the sympathy of some of the jury should be excited for him." A large verdict was brought in for Mr. Rolfe's client.

On other occasions I have heard Mr. Rolfe speak with remarkable power and effect,—rarely equalled, still more rarely exceeded, by any other man. After the accident above alluded to, he rarely appeared in the management of cases in court, or as a speaker on public occasions.

Mr. Rolfe possessed a strong poetic taste, was accustomed to quote poetry extensively, and, furthermore, would occasionally indite poetry of a superior quality.

It is not my purpose to give an unqualified panegyric of Mr. Rolfe. He was not perfect; he was human. Most people in this world, including even lawyers, have their outs in some direction.

He was a warm and sympathetic friend and ever alive to the wants of others, and the tendency of his nature was always progressive, commanding the confidence and friendship of all his associates.

He was out of health for a long time before his death, which was attributed to a general breaking up, with serious complications.

On one of the last of our interviews, he repeated the sonnet,—

“Leaves have their time to fall,
And flowers to wither at the North wind's breath,
And stars to set; but all,
Thou hast all seasons for thine own, O Death!”

The season when death claimed Mr. Rolfe as its victim was the later spring, when the leaves and the flowers were fast maturing. He died on the morning of Sunday, May 29, 1898, and his funeral took place in St. Paul's Episcopal church, which he had ordinarily attended.



JAMES RYAN, JR.

JAMES RYAN, JR.

BY S. D. FELKER, OF ROCHESTER.

In life we are in the midst of death. At the end of every life there is an open grave. Life passes through us, we do not possess it. It is the offspring of death, and one life is but a gleam of time between two eternities.

It is written that all men must die. No lawyer has ever yet perfected an appeal or sued out a writ of error from the judgment which dooms us to death. From it no appeal lies. The mandate and sentence are issued from the court of last resort.

Death though no more mysterious than birth is the most fearful word known to human speech. No matter what may be your religion, it brings terror to life's busy circle.

It strikes the mighty leader in the battle's front. It strikes the mightier leader in the field of thought. We see it entering the poor man's house and leaving a wife and little ones without a shield from poverty and want. The sweetest face, the brightest and loveliest form, are powerless even for an instant to keep back the falling blow.

It touches the cradle and the pretty baby wakes no more. It walks through your city to-day, and to-morrow you are a stranger in your own house.

"And the stately ships go on
To their haven under the hill;
But oh, for the touch of a vanished hand
And the sound of a voice that is still."

To one to whom life offers nothing, for whom disappointment has blasted hope, in whose bosom ambition is dead, or

to one who is compelled to drag out an existence rendered miserable by misfortune or disease, the grave is doubtless welcome; but that one on the very threshold of life with fine possibilities should at that moment when most is to be expected cease to be a factor of human existence is incredible, and makes those who witness it to shudder.

Such was the sad death of our friend and brother, James Ryan, Jr.

Few men had more to live for or a better right to expect many years of success, prosperity, and happiness. No thought of his early departure from the walks of life entered the minds of those who knew him and the sad announcement that he had gone from the earth forever was a shock to everyone of his host of friends.

He was born April 13, 1860, and died of malignant scarlet fever, Jan. 23, 1898, aged 37 years, nine months, and ten days.

He was the son of James and Mary Phelan Ryan, both of whom came from Kilkenny, Ireland, when very young, and settled in Dover, where James Ryan, Jr., was born.

Mr. Ryan obtained his education in the public schools of Dover, at Franklin and Berwick academies and by private study. Mr. Ryan early in life commenced to work in Sawyer's woolen mills and by small savings earned money to educate himself. His spare time evenings was always spent with his books. He belonged to that class of boys with limited opportunities who made the most of them. He was never afraid to burn the midnight oil.

Eager to better his condition and get out of the common rut of humanity, he bent his whole energy for an education. He was self made in every sense of the word and grew stronger because of the difficulties and single-handed struggles of his early life. His mind was ever active and while at work at Sawyer's, he invented a stop motion which was placed in use on the looms.

As a boy we find him studious and attentive to every

duty. While at work at Sawyer's mills he was president of the South End Patriotic club and demonstrated his ability to lead among men. His push and energy was shown in the largest and best Fourth of July celebration the club ever had.

In 1888 he entered the office of John Kivel, Esq. Here we find the young man giving that strict attention to his studies which characterized his early labors. He taught the evening school during the time he was completing his professional education. In 1890 he was admitted to the bar and immediately took front rank among the young attorneys of the southern section of the state. He was a good public speaker and appeared frequently on the stump in the memorable campaign of 1890. He early took an active part in politics and succeeded in changing the political complexion of the city in which he lived. He was a leader among men and knew how to harmonize political differences. He believed in being honest in politics, as in everything else that he did, and he obtained and held the confidence of the leaders of his party; his advice was sought after by them and his judgment was always relied on.

His success as a lawyer was phenomenal. He immediately commenced the trial of jury cases. His mind was analytical and practical. He went to the bottom of every case. Having gotten at the facts of the case, he was extremely practical in applying them. He was persistent to a very marked degree and because of this persistence he often won where others failed.

He never was discouraged; if there was a ray of hope he saw it and fought to the finish. He had the happy faculty of looking on the bright side of a cause and if he had a glimmer of the right on his side he always thought the court would find a remedy. His faithfulness to his client was never questioned. No man ever accused him of fraud, wrong, or deceit, and none of his followers ever feared that the flag he bore would be dishonored. His persistency

and his fidelity to the cause he espoused sometimes led him to make his client's cause his own with some of its attendant ill feeling.

He was a good hater and a true friend. He was distinctively a gentleman. His genial, social nature made friends of all with whom he came in contact. He had a kind and pleasant greeting for all mankind. The merry ring of his laughter drew you towards him and you were better for the contact. His companionship was delightful and his friendship a treasure.

Open-hearted generosity he always practised. A few days after his death, I went into a barber shop in Dover; the theme of conversation throughout the city was the sudden death of Mr. Ryan. The barber spoke of him and said, "When my wife died, he came to me and wanted to know if I needed any money; if I did he would let me have some." At noon I got my meals at a restaurant and the keeper said, "Ryan offered to start me in business." Such was his desire to assist others, that, I think, he would go without himself to do it. By his courage and persistency he built himself up to the fulness of a strong man and gained an honored position among men.

In 1894 Mr. Ryan received the appointment as postmaster which he held until the time of his death. He made many improvements in the service and succeeded in having as good an office as there is in New England fitted up for the location.

On Sept. 2, 1890, Mr. Ryan was married to Jennie Goodwin, daughter of Mr. and Mrs. Edwin Goodwin of Dover, N. H. They had three children, Mary, Daniel, and James, of whom the last named died a few weeks before the father, of the same disease. He is survived by, besides his wife and two children, his father and mother and four brothers and two sisters.

In the beautiful drama of *Ion* the instinct of immortality, so eloquently written by the death-devoted Greek,

finds a deep response in every thoughtful soul. When about to yield his young existence as a sacrifice to fate, his beloved Clemanthe asks him if they should not meet again, to which he replied :

" I have asked that dreadful question of the hills that look eternal, of the streams that flow forever, of the stars among whose fields of azure my raised spirit has walked in glory. All were dumb. But while I gaze upon thy face I feel that there is something in that love that mantles through its beauty that cannot wholly perish. We shall meet again, Clemanthe."

It was asked many generations ago, " If a man die shall he live again ? " Later on it was answered by the blessed Master, who said, " He that believeth on Me hath everlasting life."

Such a belief had our Brother Ryan. I have talked with him often on the future, and his confidence in the future life was supreme. The day before he died I visited him, and he said, " I do not fear death, I am ready and willing to go." Little did I think that before another day had passed he would leave us.

" God's finger touched him and he slept;
O friend say not good-night,
But on some brighter shore,
Bid us good morning."

Let us rest assured that in the life beyond the real, the actual, while here all is uncertain, evanescent, those qualities which made Brother Ryan beloved and esteemed by all who knew him shall have their full fruition. His life is not ended but only just begun, and its every possibility shall be realized.

A. BIRNAY TASKER.

BY PAUL WENTWORTH, OF SANDWICH.

When the news of the death of Albert Birnay Tasker was announced, there was a feeling of deep and sincere regret among those who had known him well and experienced the benefits of his counsel. Never being possessed of a strong constitution, Mr. Tasker found it necessary to carefully protect such health as he was permitted to enjoy. By his care and good sense in this particular, he doubtless prolonged his life, which, after all, now seems so short.

During the fall of 1898, it became evident that he was a victim of the disease known as jaundice, and when the Supreme Court commenced its session at Ossipee, in and for the county of Carroll, on the 18th day of October last, Mr. Tasker was unable to attend and discharge his duties as county solicitor, and in spite of human care and skill he died at Sandwich on the 13th day of November, 1898, in the fifty-fifth year of his age, having been born in Northwood, New Hampshire, on the 3d day of March, 1844. He was never married, and was the third of four children, two of whom are now living.

Mr. Tasker's father, Rev. Levi B. Tasker, was born on the 21st day of March, 1814, in Strafford, N. H.; he was a Freewill Baptist clergyman and settled in Sandwich in 1848, where at different intervals of time he spent thirteen of the twenty-six years of his ministerial life and where he died in August, 1875. He was a quiet, industrious, and scholarly man and so conducted himself in the community

that the dignity of his high office was never lowered, while his kindness of heart elicited and retained the affections of the people.

Mr. Tasker's mother, Hannah P. Caswell, also born in Northwood on the 2d day of September, 1816, and who died in Sandwich on the 7th day of August, 1895, was a quiet and conservative woman, possessed of good common sense, and the purity of her heart and the benevolence of her life were known and appreciated by all who knew her. Sometimes it seems (but it may be, and I hope it is a mistake) that these motherly women are passing away all too swiftly. Without them, our government with all its fondly cherished institutions will also pass away. For good homes and good government are inseparable.

Mr. Tasker was a worthy and creditable son of his parents. By nature he was quiet, cautious, and modest almost to the point of diffidence. But he was accurate and no work left his hands done in a careless manner. Besides being a lawyer, he was a practical surveyor. And it is to be regretted that he was unable to complete the survey of the town of Sandwich which he began in 1886; the principal part of the main work, however, was done in 1891-'92, while the previous work was largely preliminary. At first, the object was to determine the original lot lines; but in time, the plan was enlarged and it was decided to make a complete and accurate map of the town embracing the roads, ponds, and other natural features. This work was left in such an advanced stage that it is hoped and expected that it will be perfected in accordance with the design of its projector. Those who have never attempted such tasks are innocently ignorant of the amount of labor and patience required; the recollection of the aged must be sought and preserved, every legend must be traced to somewhere or nowhere, and days and weeks of labor may never be visible on the map to the naked eye.

Mr. Tasker was a graduate from New Hampton, and was

at Amherst college for a short time. He was admitted to the bar in Concord, New Hampshire, on the first day of September, 1881, and in Salem, Massachusetts, on the 2d day of December, 1881, and practised law in Peabody, Mass., from December, 1881, to March, 1884. Then he commenced practice in Sandwich, which was continued until his death.

He was a member of Red Mountain lodge, No. 68, A. F. and A. M., and also Mt. Israel grange, No. 158, both of Sandwich.

He was elected solicitor of Carroll county in 1894 and 1896. He was also town clerk and supervisor of the checklist of the town of Sandwich for several years. In the discharge of the duties of these offices he showed none of the spirit of narrow partisanship, but at once impressed you with the conviction that he was honestly trying to do his duty without fear or favor. Such men are never noisy, but they fill important places, and when they die the emptiness is realized.

Mr. Tasker was a lover of nature; he enjoyed the open air; he liked the fields, valleys, rivers, ponds, and mountains of the picturesque town of Sandwich, and the book of his life appropriately closed as mother nature was closing up the book of the beautiful panorama of forest hues which he was permitted to see and enjoy in the fall of 1898.

GEORGE W. M. PITMAN.

BY F. B. OSGOOD, OF NORTH CONWAY.

With kindest hand, nature has scattered here and there throughout our state many a beautiful spot and landscape scene.

In one of these, in that part of the town of Bartlett locally known as Dundee, George Winthrop Marston Pitman, the subject of these memorial words, was born on the eighth day of May, 1819.

Through the valley south of his father's farmhouse flowed the waters of the east branch of Saco river, draining away in the springtime the melting snow from hill-sides and mountain gorges. Upon its banks, now as then, the blossoming Mayflowers make sweet the air of spring, and in the thickets song-birds sing. Eastward rise the Chatham mountains; rugged, stern, and girded with forests of spruce, pine, and hemlock. In the west and south of west, beyond the meadows of the Saco, stretch the Bartlett cliffs, and the long, low line of North Conway's far-famed ledges. Away in the north, Mount Washington and the associate peaks—in the old days called the "Crystal Hills"—lift their white, shining summits into heaven's blue.

In and near this beautiful mountain region Judge Pitman passed his boyhood and his life, early receiving the impressions that helped to create in him that love of nature so characteristic of him. To him, the brooks, the rivers, the forests, the mountains, and all the manifold and varying aspects of nature were sources of delight. He found a "pleasure in the pathless woods." The very

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storms and winds were to him attractive. He studied nature, and understood her moods and changes. His life was passed close to nature. Often have I heard him say that he could not long enjoy himself in a city. Its artificiality, as he termed it, was distasteful to him.

Brother Pitman's early educational advantages were limited to the district school of his town, supplemented by a few terms at the academies at North Conway and Fryeburg, Maine.

He used his time and such advantages as he had well, and at the age of seventeen became a teacher in the common schools, giving satisfaction wherever he taught, both by reason of his mental and physical qualifications—the latter not being of small account in the early days when the right to “put the master out” was regarded one of the perquisites of the scholars, provided they could do it. Judge Pitman was an athlete and strict disciplinarian, and was never “put out.” He was a fine grammarian and mathematician, and, though his school privileges were small, his self-reliance was large.

He instructed himself in plane and spherical trigonometry, and became a land surveyor. He worked at this business and excelled in it for many years, in fact, during his whole life he did more or less surveying. His natural turn for mathematics, his love of the woods and nature, all gave an impulse to his efforts in this direction. Probably Judge Pitman was as well versed in the lines and locations of the battle-scarred White Mountain region—scarred in legal contests long drawn out and fiercely fought—as any man has ever been. His plans and maps are of great value and greatly sought for, and he was often called upon to testify in the frequent land trials for which our northern country is famous. This out-of-doors life gave added vigor to his constitution, and he was by nature strong and powerful.

From surveying and associations in cases before the court, Brother Pitman naturally turned toward legal science, and

took up by himself the study of law, and at the age of thirty-six, in the year 1855, was admitted to practice. It would be but an affectation of superlative respect for the memory of the dead to say of Judge Pitman that he was a great lawyer, nor would he wish it said. The circumstances and surroundings of his life were such as would not seem to call forth a man's entire mental powers. To a certain extent, we are all—it seems so, at least—a part and parcel of our environment. Judge Pitman, in a lower sense, was not ambitious, but in the higher and true sense he was. He was content with his quiet country life, with its rural manners and simple ways.

It is idle to speculate upon what he might have been and done had he cared to join the throng in some great centre of population where men crowd and jostle each other, exerting every fibre of brain and power of body in feverish desire to gain admittance to "Fame's proud temple," through whose portals but few may pass, while the many faint and fall outside the gates.

To him it seemed a life more to be preferred to abide where he was born, to win the confidence and esteem of his townsmen, to aid and advise them in their little business affairs—all-important to them—to sympathize with them, and to go in and out before them as their mentor and friend. This he did through all the years of his long life. They, in turn, conferred upon him all the honors they had to give. Twenty years he was chairman of the board of selectmen of Bartlett. He was sent twelve sessions to the general court, and twice elected state senator, serving one term as president of that body. For three years he was one of the commissioners of Carroll county, and judge of probate two years. "He has the unique distinction of being the only citizen of the state who has been honored with a seat in three constitutional conventions, those of 1850-'76, and '89."*

* History of Carroll County, page 271.

For the proper performance of the varied duties relating to these several offices, Judge Pitman gave his best efforts, not always commended, but, as I believe, always conscientious in what he did, regarding, with his old-time true democracy, "a public office as a public trust."

He was a man of strong convictions, and those who knew him best know that he had the courage of his convictions. He probably was not always right,—infallibility is not an attribute of humanity. Of this I think there can be no doubt, that he was a man whose sincere desire it was to do his duty faithfully and strenuously in the world.

Brother Pitman had literary tastes of an high order. Though his reading may not have been extensive, it was of the best. Books were not easy of attainment in his youth and earlier manhood, and with the increasing care of his advancing years his time for reading became more limited. In early life his favorite books were Josephus, the Bible, Plutarch's Lives, and Shakespeare. Pope's Essay on Man he read and reread, a good portion of which he could repeat, often quoting passages from its pages in illustration of some point in argument. His liking for such a class of reading as the works mentioned followed him through life, and he read them carefully and understandingly.

As a speaker he was logical and forceful, and though at times he seemed to shrink from public speaking, whenever he did speak he commanded the attention of his audience.

Personally, Judge Pitman was a genial, earnest, hopeful man, of kindest instincts and generous nature—a gentleman of the old school—hospitable to a fault, and courteous to all.

He is gone. On the third day of December, 1898, he died, having attained within but a few months the age of eighty years. He will be missed. His older associates throughout the state learned with sorrow of his death. The state will miss him as it misses all good citizens when

taken away. His county and town will miss him, his words of counsel and of warning. We especially, his brethren of the Carroll Bar Association, shall miss him. We shall miss his pleasant smile and kindly greeting. We shall miss him in the social circle and in the court-room. We shall not forget his well-known staying, fighting qualities in the interests of his clients, his zeal for them tempered always, as we may well believe, by honesty of purpose.

His work is done. Resting now in the country graveyard, near where he was born, under the shadow of the mountain ranges he loved so well, his life-work done, its burdens gone, the words that were written of another seem to apply with a peculiar fitness to our friend and brother :

"Ah! but yesterday we saw him there in the familiar place,
Where he welcomed all as brethren with his old-time courtly grace,
But we knew not it was heaven that was shining on his face.

"Light was nearer than we thought it, for to-night we come, and find
He has passed beyond the shadows that had made our eyes so blind,
And his almost fourscore summers are a golden trail behind.

"Silent do his books await him on their shelves in long array,
But his book of life is ended, and is silent now as they,
And will henceforth stand among them to be seen and read away.

"Sleep! the peace of God upon thee—sleep! and let the heavenly signs
Drive their worlds in solemn silence till the world's great morning
shines,
Where thou resteth from thy labors, in the hearing of the pines."

J. HAMILTON SHAPLEIGH.

BY W. H. ROLLINS, OF PORTSMOUTH.

J. Hamilton Shapleigh was born at Portsmouth, March 25, 1810, and died at Exeter, August 24, 1898.

His father was a shipmaster and a prominent ship-owner and citizen of Portsmouth, and president of the branch bank of the United States at Portsmouth. His mother was Sarah (Champney) Shapleigh, a descendant of Louis VI, of France.

He was a cripple from birth, and never walked without artificial aid and never more than a few rods at a time. For the larger part of his life, a cane was sufficient, but in time crutches and then a wheeled chair were necessary. In early life he made a voyage to New Orleans and on the Mediterranean. When his father died, the larger part of his property had been taken by the United States to pay for the Louisiana purchase and the debt has never been paid, though one attempt to do justice was defeated only by the veto of a New Hampshire president. Being compelled to support himself, he determined to practice law and studied five years in the office of Hon. Ichabod Bartlett.

He was admitted to the Rockingham county bar in February, 1842, and for some years has been the oldest surviving member.

His infirmities prevented him from obtaining a large practice, but until their increase prevented, he continued the practice, partly in Exeter and partly in Portsmouth, and was a careful and diligent lawyer. He was fond of research in historical and genealogical matters.

In 1847 he was appointed register of probate, and held the office five years. In 1852 he was elected register of deeds and held the office two years. No man ever filled office better than he did these two for which he was especially fitted by his character and habits.

In 1865 he was appointed U. S. pension agent and held the office till March, 1869, and here again proved himself the right man for the place. While holding the office he detected and prevented the success of many attempts at fraud, although the criminals escaped punishment through political influence. He was a gentleman of the old school and, though set in his ways, was highly esteemed by hosts of friends.

He was in politics a Whig during the life of that party and afterwards a Republican.

DANIEL B. DONOVAN.

BY EDMUND S. COOK, OF CONCORD.

Among those summoned from our ranks since our last meeting was Daniel B. Donovan of Concord, whose death occurred at his home on November 28, 1898.

Mr. Donovan was forty-three years old, just at the height of a useful and successful career, and had to all appearance many years of activity for good before him.

Daniel Bartholomew Donovan was born in Concord, New Hampshire, October 6, 1855, and was the son of Daniel and Mary Donovan who emigrated from Ireland to this country in 1847.

He was educated in the public schools of Concord and graduated from the high school in 1873 with honors. On the occasion of his graduation, he delivered an oration on Froude in which he made a strong defense of Ireland and her sons against the attacks of Froude made in the name of history. This gauntlet early thrown down by him as a champion of Ireland was never withdrawn. Although a thorough American and loyal to every interest of the adopted country of his people, he was a lover and defender of his race and watchful for every opportunity for its advancement.

On the completion of his course in the high school, Mr. Donovan entered the office of Eastman, Page & Albin, of Concord, as a law student. From this office he was admitted to the bar in 1876, at the age of twenty-one years. For a short time he was associated in the practice of law with Samuel B. Page, but during the greater part of his professional life he was without a partner.

Mr. Donovan was a staunch Democrat and was three times honored by his party with the nomination as candidate for the office of solicitor of Merrimack county. He was elected twice, in 1890 and 1892, and although defeated on his third nomination, he received a very flattering vote in a strong Republican year. During his incumbency he won the admiration and respect of all who came in contact with him officially, and demonstrated his entire fitness for the office.

Mr. Donovan was a member of the school board of the city of Concord for eight years, and during this time was secretary of the board seven years. He was intensely interested in educational matters and during his term of office he was instrumental in introducing a number of improvements in the school system.

In 1886, Dartmouth college conferred on Mr. Donovan an honorary degree of A. B. in recognition of his interest in educational matters and of his general high attainments.

He was connected with the New Hampshire National Guard for some time in various capacities, including those of inspector-general, judge-advocate, and inspector of rifle practice, each with the rank of major. In each grade of his service, in the ranks and as an officer, he made a splendid record, gaining many friends among the military men of the state.

In addition to attending to his law practice, Mr. Donovan was for over twenty years engaged in newspaper work. He was first associated with the *Manchester Union* as its Concord correspondent, and later represented the Associated Press. He was the Concord correspondent of the *Boston Globe* from 1890 to the time of his death, and was at one time city editor of the *People and Patriot*. This part of his work Mr. Donovan considered recreation and rest from his law work, and through it he gained a wide acquaintance throughout the state and an enviable reputation as a journalist.

It was as a lawyer, however, that Mr. Donovan made his mark. He possessed in a marked degree the qualities necessary for success in his profession. He was honest and a hard worker; genial and easy to approach. He had the confidence of a large clientage and never betrayed it. He was a ready and fluent speaker. His preparation of his cases for the trial court and the law term was thorough and conscientious. His treatment of his fellows at the bar was courteous and fair and he was especially considerate towards the younger members.

Mr. Donovan was among the first young men of Irish parentage to enter a profession in this state and his career was eagerly watched by his own people. He was a pioneer of our adopted fellow-citizens in a new field of labor. He demonstrated to them that it was safe to enter the field, and many of his people, encouraged by his example, have followed him to their advantage and to the advantage of the professions which they adorn.

Mr. Donovan was active in the development of the order of the Knights of Columbus in this state. He was a member of Concord Council, No. 112, which he served for some time as advocate. He was appointed district deputy of New Hampshire in 1897.

Mr. Donovan was never married. He lived with and cared for his widowed mother, and his love for and devotion to her were expressive of the finer elements of his character.

By his death the state lost a good and loyal citizen; his family a loving son and brother; and the bar an honest and upright member.

JEREMIAH MASON.

BY ARTHUR LIVERMORE, OF MANCHESTER, ENGLAND.

Half a century ago, the Hon. Jeremiah Mason died at his house in Boston, whither he had removed his residence on leaving Portsmouth in the spring of 1832. "He has gone," exclaimed Rufus Choate in his beautiful funeral oration, "leaving on earth, beyond the narrow boundaries of his family, nothing in the smallest measure resembling him!" And *these* shadows of a form so noble and unique, he might have added, were but vague and fragmentary indications of what they stood for. That noble and unique form, its attitudes or, as Shakespeare would have said, its "station," constitute a most attractive and endeared *ensemble* in my own memory; and I cannot imagine myself as giving you a greater pleasure than in transferring to your apprehension those inspiring impressions. It will not be my endeavor to set forth the great professional attainments which have brought him to the admiring notice of his contemporaries and established in the generations, succeeding and yet to come, the largest measure of fame that the transitory character of the lawyer's achievement can possibly secure. The memory of such achievements begins to fade the moment their issues are secured, because the few who are deeply interested in those issues soon settle into acquiescence with them. The successful party becomes familiar with his triumph, and the other makes peace with untoward fate.

Neither do I propose ambitiously to follow him into the senate, where his vast forces of mind were fully recognized, though they were wasted in criticism of the forces of numbers, and in opposing them without hope. My more

modest; albeit ineffectual, endeavor will be to show him in the by-paths of his life; in the adornments of his private character—perhaps in some of his failings—and in the warmth and refinement of his home.

His extraordinary stature—six feet and seven inches, as it was said—was in his youth and before his figure was rounded out with tissues into comely proportions, too conspicuous. According to some traditions it was almost ghastly. And it is easy to imagine that the gaze which such an extraordinary figure naturally attracted might have created a feeling of resentment and habitual defiance that ripened into haughtiness and the defensive manner that repelled many, and, indeed, made foes among those towards whom large compliances and courtesies might well have been conceded, and indeed wisely bestowed. I once heard him say, alluding to a young lawyer, who had sought “the bubble reputation” in the way of adventuring a rude remark of Mr. Mason, “I do not know what I have done, that every dog should bark at me.” All the same, the *did* bark at him, far and near. Except that on a very few occasions he was one of the representatives of Portsmouth in the general court, it is believed that he was never a candidate at a popular election. He was once attorney-general of New Hampshire, and the senator of that state in congress. In 1824 he was again a candidate but failed, as Webster truly said, “for causes not fit to be spoken of or remembered.” But he had one hour of popularity, one moment at which his heart might have felt a glow of triumph. He was through life a Federalist, and among those who believed and strenuously insisted that the United States had no adequate cause for going to war with Great Britain in 1812. By too persistent expression of such opinion after the war was begun, some of that party drew upon themselves coarse imputations of disloyalty and of treasonable relations with the enemy. Mr. Mason, of course, came in for a full share of such unfounded calumny. But in the

course of events a British fleet was seen off Portsmouth, and the utmost terror prevailed among its inhabitants. A public meeting for dealing with the exigency was thronged with men of every shade of political opinion, and of every degree of hatred of Mr. Mason. But all agreed in placing him at the head of the movement and in invoking his counsel as without question their best and only guide in a crisis of such unprecedented alarm. Such was the story told me by men who had been spectators, or perhaps actors, in the scene and remembered it well.

I entered his office as a student in the latter part of the year 1830, and so remained for a term of two years, a few months of which transpired after his removal to Boston in the spring of 1832. He then appeared to be at the zenith of his professional fame and at the perfection of his form. I was much impressed with the beauty of that form, which I most distinctly remember as clothed in broadcloth of snuff color, the brilliant hue of what used to be known as "yellow snuff." Gentlemen at that time wore colors, especially brown and green in their many shades, whether for full dress or in the street. I failed to perceive the grand proportions of his head until some years afterwards I saw its likeness in marble, ranged alongside with those of Webster and Story and others of their order. Perhaps my want of that perception may have been owing to an uncomely, sandy thatch of hair. But a common remark was to the effect that his head was not adequately proportioned to his almost colossal body. His complexion was remarkably delicate and feminine. A figure six feet seven in stature, and perfectly developed as his then was, must needs have been a heavy one; and Mr. Mason accordingly walked slowly and with apparent reluctance. Indeed a very little inclemency of the weather, or ice or snow in the street, commonly induced him to drive the short distance between his house and his office.

His manners certainly often appeared haughty as I have

already intimated; but they were more obviously *stately*, as if they had been inherited from a school even then antiquated. His bow was most expressive of the kind of regard in which he held the party to whom it was addressed, and was certainly most winning when inspired with kindness and respect.

I cannot state that during the two years of my apprenticeship in his office, he gave much heed to my progress in professional study. Perhaps he thought that knowledge which came by seeking, was of more worth than that which came through the ministration of teachers; or that a living mind in thirst for wisdom, might of its own unaided powers, have found, tasted it, and assimilated it, in the books that stood gazing from the walls of that office, inviting repast. But he was not in other matters penurious of counsel and knowledge. There were not unfrequent intervals of leisure, when at some trivial occasion for speaking, he would fall into one of his extended monologues, passing from one theme to another upon inducement not always obvious, and ranging over spaces of immense fertility and variety, whatever may have been the ways by which he gained the passages from one to another. In everything he was so wise, so replete with curious and recondite knowledge, and so rich in fancy and induction, and indeed in everything that can adorn the mind of man and magnetize it, that I used to lament my want of adequate memory, or of a stenography that might have perpetuated the relish of those hours. But in fact it has gone with the aroma of summer flowers, leaving only fragmentary indications. On one occasion he deprecated the disposition that many promising young men had shown, for entering political life and gaining public office. The result, he said, had generally been the defeat of the reasonable hopes of their friends, and the wrecking of their own lives. "Public office," he would say, "is of no value. Its emoluments are contemptible, nor does it bring respect to its bearer.

“Possibly the stable boy, who leads out his horse, may hold his stirrup with a little more cringing and deference by reason of the office. But the average of respectable persons fail to recognize such distinction. They perceive it to be one that involves no presumption of merit. Indeed one of the most discouraging signs of the time is, that honesty is *not* commonly regarded as a necessary qualification for any popular office. Now there is our neighbor Bill ———. He is a man, whom for capacity or honesty, nobody would accept to arbitrate in a matter of ten dollars, and yet they all run and vote him for senator, with perfect *con amore!!*” (Better as a truth than as good English.) “Now there is Mr. Webster on the other hand, who if he were to become president of the United States, as it is quite possible he may, would not be held in more respect than he now is, though only a private gentleman. It is certainly a truth which awakens some hope in the stability of our affairs, that the judiciary is held in a good degree of respect. If that were to fail, and if men should fail to have confidence in the honesty and capacity of the judges, they would cease to go to law, and would take up the pitchfork to protect their possessions.” “The law (as a profession) is conservative.”

“There is a good deal of law in the Constitution of the United States.” “Some think the profession is crowded. But those who take part in the arduous and more important cases are not apparently too many, and without a reasonable expectation of being one of that class, it is hardly worth one’s while to enter the profession at all. The collection of small debts, and taxing paltry bills of cost, come to little, and hardly recompense the trouble they cause.”

It is possible that these imperfect reminiscences may convey a notion of the manners of the man.

Mr. Mason, as I have already said, was a Federalist. But he was such for the reason that the men and measures of

that party were more generally approved by him than were the men and measures of the Democratic party. For he was no partisan, and disliked the two Presidents Adams, both father and son, as much as he did any two of the opposite school of politics. In short he was a critic, and no man's man. Yet, like the most of us who hold opinions, he held his with the tenacity that justly enough follows rational conviction, and was by no means exempt from the passion and prejudice that often attend it. In his apprehension, too many of the able men in New England, who declined or renounced the pacification of parties in the time of Monroe, did so less from commendable motives than for personal ends. Such a belief roused in his censorious mind indignation and contempt, and were standing themes of his very bitter sarcasm. When a certain judge of probate was undergoing the inquisition of a Democratic legislature, for misdemeanors pretty fully proved, Mr. Mason asked me some questions concerning the judge, who happened to be known to me. I knew nothing very likely to be of advantage to the unfortunate judge. "Is n't he a Democrat?" inquired Mr. Mason. "No, I believe he is on the other side!" "Damned fool!" was all the comment, but it denoted a very disparaging estimate of both the culprit and his judges, and not an amiable one.

Those days were previous to the era of railroads and electric telegraphs; and important documents were transmitted between the larger cities by means of relays of horses at short stages, ridden by carriers at full speed. The New York papers thus arrived at Portsmouth some hours in advance of the post, conveying, of course, among other news, the latest from Europe, brought by the "Packet," a line of ships despatched weekly from Liverpool and New York. These vessels, depending upon the wind for locomotion, arrived at uncertain intervals, so their respective budgets of news were announced in postscripts in the New York journals, *headed* with figures of horses at a gallop, their

riders with trumpets at their mouths, illustrating the legend in large capitals beneath, "SIX DAYS LATER FROM EUROPE!!" or *three* or *four* days, as the case happened to be.

One morning the quiet of our office was disturbed by the sudden entrance of Mr. Cutter to announce to Mr. Mason the arrival of one of those postscripts, advising the election of a House of Commons pledged to the great reform and the access to the Whig administration, of Lord Grey, Lord Althorp, Mr. Stanley, and so forth. Many remarks, of course, were made on an event so harmonious with American views. Wellington, with his stiff Tory crew, had been displaced, the rotten boroughs crushed to atoms, and a Whig, nursed with thirty years of adversity, raised at last to the head of the state, and everything in the process of *reform*!

Among the "sounding generalities" of the moment, I remember only the cautious remark of Mr. Mason, to the effect that the Whigs had in general shown themselves incompetent for administration, and that he had only imperfect confidence in existing forecasts of events.

Mr. Mason retired from the senate of the United States in 1817, two years before the expiration of his term. He had found his position there, for various causes, unsatisfactory, but had determined to await the action of the legislature of New Hampshire in the election of a colleague to succeed the gentleman whose term of office had just ended. But after the result of that action became known to him, he hesitated no further but resigned and went home. It had become very obvious that the small influence that he could have had in that body in which he was of the minority, would utterly vanish upon the evidence that he was not supported by his constituent state. Whatever error in politics there may have existed, his resignation and his motives that induced that act,* appear to me to denote the honorable and lofty mind that was certainly his.

*The history and motive of this retirement from the senate, I derived from Mr. Mason himself.

Mr. Mason was not, till toward the close of his life, a religious man in the sense in which that epithet is usually taken. But he was not without the perception of the mystery of life and destiny, and he followed (only far behind) in the procession of those who think they have solved that mystery. He once playfully stated to Mr. Bartlett, who next day repeated the statement to me, a brief history of his action in religious matters. It was at a party the ladies of his family were giving, and its more youthful constituents were enjoying a carpet dance, while the two gentlemen were looking on. The puritanic objections to that form of amusement had at that time certainly taken leave of good society, yet their recent existence was so far recognized that conversation naturally enough took notice of them on that occasion; in the course of which Mr. Mason remarked in substance, "When I first came to Portsmouth I thought of no other church but the high Calvinistic one in which I had been trained, and accordingly went thither with my small family. But by degrees their dogmas and their manners began to appear to me more severe than was agreeable or needful; and then I tried your heterodox Unitarian congregation" (of which Mr. Bartlett was a member) "but their minister was hard to follow, and seemed to change his doctrine from day to day according to his personal convictions or fancies. Then I looked into the Episcopal church, where everything seemed to be set down in books, which I thought might restrain them from grave wanderings, and so I have remained there ever since."

Mr. Mason was, as I have intimated, too thoughtful a man to evade the pressure of questions concerning the origin and destiny of the generations of men that cannot be counted, and of his own soul in particular; and quite too wise to attempt a solution of them. But those insoluble problems did not lose their force with the decay of the forces of life; and he seemed to find repose in the hopes that brought him in closer harmony with those who were

dearest to him, and among his latest utterances were words that attested a faith in which he found the substance of the things hoped for. Such events lend a measure of dignity to what to the Greeks was foolishness only.

In connection with the closing scene of his life, Mr. Ticknor related to me an anecdote which he thought illustrated the habit of accurate thought and expression for which his legal practice was distinguished. One of his daughters made a remark in a suppressed voice, which for some cause she desired that he should not hear. "What do you say?" "Oh, nothing at all, sir." "Mary," said he, with difficulty summoning the necessary strength, "what were the words you used when you said nothing at all?"

His removal to Portsmouth and his marriage occurred about a century ago. He soon afterwards built the house in which he lived and which became by the influence of his most refined, gentle and charming wife, a model home, and the headquarters of a cultivated local society, and the scene of a liberal hospitality, attracting from large distances a good many of the distinguished men of the country, sojourning with their families in the manner of the Patriarchs. The Stocktons of New Jersey, the Ticknors of Boston, the Gardiners of Hallowell in Maine, Mr. Johnson the reporter, of New York, with his family were among those whom I met as guests at that house during the eighteen months of my novitiate in Mr. Mason's office. But everything in my memory of those days fades in the glow of that of the family itself. Its cordial and cultivated manners, its loyalty and unfeigned sympathies made the house most attractive, and a constant caveat to such as needed it, against the affection and pretention and the nameless tricks of perspective, by which the vulgar seek "to make that which is superficial only, seem body that hath bulk and substance." It was a caveat against rudeness also, and held the guest to that finely drawn line which divides the *charm* from the *offense* of familiarity.

Of the eight children then living, the youngest, having long survived the others, died two years ago at the age of eighty-one, leaving two children and the children of one of them. The next generation is rather numerous. Her last letter, a few days before her death, describes a Christmas party she had been giving, at which forty-seven of the descendants of Mr. Mason were gathered.

The ghosts of the departed that are supposed to haunt the scenes of their earthly lives, are supposed not to do so in moods of gaiety, or with a purpose of conveying a spirit of cheerfulness to such scenes, or to the living actors thereon. So perhaps it may be said of the affections surviving the objects that gave them birth. *They* come not in forms and habiliments that fit them for intruding upon festive gatherings. And yet it has been affirmed that festive music does not reach its highest expression but through the aid of the minor chords that pathetically intimate the limitation of all pleasures, and the dark broidery traced upon the fairest lines.

CHARLES WILLIAM SANBORN.

BY W. H. COTTON, OF LEBANON.

It is impossible, after the lapse of so many years and with the meager data at hand, to write a sketch at all worthy of Charles W. Sanborn.

My relations with him were very intimate during our four years of comradeship at Hanover; and I entertained for him, as I know he did for me, far more than passing friendship.

Circumstances prevented this intimate association after the close of our college days, but "the love lived on" and still lives, though many years have come and gone, and his weary heart, long since, found rest "beneath the low, green tent, whose curtain never outward swings." Time, too, with its resistless tide, has obscured, in memory, many episodes of those days—those halcyon days,

"When hearts are light and life is new,"

which would have given invaluable tone and color to this imperfect chronicle.

It would be easy to fill pages with stilted eulogy, but few things would have been so irksome to our frank and open-hearted classmate, and no one would have a keener sense of its unfitness.

And so, with great reluctance, because I feel how largely my will must wait upon my memory, how cold and formal this brief history must seem, compared with what my wish would have it, I sketch the portrait of our dear "old Wakefield," as best I may.

Charles William Sanborn, son of John W. and Almira J.

Sauborn, was born at Wakefield, in the state of New Hampshire, on the 19th day of December, 1848. He was descended from a sturdy New England stock,—sturdy morally, mentally, and physically,—and inherited in a very liberal degree those moral and mental qualities, which lie at the foundation of a successful and an honorable career.

His early life was that of thousands of rural New England youth, forty years ago. The fireside, the farm, the district school and the village church were the fountains from which they drank. From these the living streams have flowed, which have been, and still are, making the history and shaping the destinies of the race.

For a youth of quick parts and honest instincts there could be no better, nobler environment, nor one amid which could be laid the foundations of more certain or more pronounced success.

It was amid such influences that the boyhood lot of our friend was cast. His was no laggard soul. He speedily mastered all that his native village could afford, toward the upbuilding of a manly and scholarly character, and a more than ordinarily inquisitive mind eagerly sought broader fields for effort and for conquest.

In the summer of 1866 he entered Phillips academy at Exeter, from which famous institution he was graduated, two years later, with the reputation of a superior scholar, and amply "fitted" for any college in the land. He was enrolled at Dartmouth Sept. 5, 1868, from which time, for four busy, happy years, his history is our common memory.

Frank, manly, warm hearted, with a genial smile and a hearty hand clasp, which always spoke a welcome, he quickly made friends amongst his classmates, and he made them for all time. Although younger than many of us, the maturity of his judgment and his abundant practical good sense made him a leader from the first, and secured for him, with his fellow-students, an influence which never waned.

He was a gentleman at all times and on all occasions. Decisive, prompt, impulsive, as he was, and full of energy and spirit, I do not remember ever to have seen him angry with a classmate, nor can I recall that an unkind or a disparaging word ever passed his lips with reference to any one of them. He was singularly free from petty jealousies, accorded to each one his just meed of praise, and hated a mean act with a religious hatred. Fun-loving, his sunny, genial nature, perforce, must be, but always kindly, playful fun, with no strain of malice in it. How many of his fellows will recall the good deacon's "Sabba' day way down in old Porter?"

His scholarship was broad, accurate and, without an apparent effort, easily amongst the first; and it was a true scholarship. No man, better than he, realized that "rank" was "but the guinea's stamp" and the husks of learning, however brilliant their coloring, had no charm or interest for him. There was both strength and symmetry in the development of all his mental faculties but perhaps no feature was more notable than his memory which in accuracy, readiness, and comprehensiveness was indeed phenomenal.

If a kind, honest, manly nature marks the gentleman, our memory of Charles W. Sanborn holds a true one in its keeping.

Immediately after graduation at Dartmouth, our classmate engaged in the lumber business at Wolfeborough Junction. This he continued for three years, but it proved an uncongenial calling, and he turned his attention to the study of law. He pursued his preparatory course with great energy and zeal under the guidance of the late G. W. Burleigh, of Somersworth, and the late Frank Hobbs, of Dover, both men of mark in the profession, and after the decease of Mr. Burleigh concluded his studentship in the office of the late Chief Justice Doe, one of the most eminent lawyers of his time. He was admitted to the bar at Concord, N. H., in March, 1881, taking the highest rank of any in

the class in which he was finally examined and at once entered upon the practice of his profession at Wakefield, most admirably equipped and with every promise of a successful professional career.

But five short years,—years often broken in upon by sickness and suffering,—were allotted him for the prosecution of his chosen work before the final summons came.

The early years of a lawyer's life, as a rule, are years of obscurity and of seemingly unrequited toil; and it has been said that the only vacant places in the profession are at the top.

That our friend would have occupied one of those vacant places, had his life been spared, was never for a moment doubted by those who knew him best.

He possessed, in a very marked degree, those mental and moral qualities which go to the making of a lawyer of the first rank, as well as a successful man in almost any walk in life. His mind was both comprehensive and incisive. He took broad and equitable views, and at the same time saw details in their just relation and proportion. A judgment, almost intuitive in its quickness, great nervous energy, a large fund of practical good sense and an eloquent and ready tongue, all shaped and guided by a nice sense of personal and professional honor, left little to be desired of the equipment of an able lawyer and an invaluable citizen.

In politics our classmate was a Democrat, because he believed democracy to be nearest right. Intense in his political, as in all his convictions, he was, yet, entirely free from petty partisanship, and with the "finesse" of the professional politician he had no patience.

During the period of his active life, his opponents were in the ascendancy in New Hampshire, and Jefferson or Jackson, as a New Hampshire Democrat, would have lived unheard of and unknown.

His own townsmen, however, mindful of his merit, and especially of his conspicuous executive ability, kept him

constantly in places of public trust and responsibility, until failing health made this no longer possible.

His religious affiliation was with the Episcopal church, but he quarreled with no man's creed; and he respected opinions, honestly entertained, however widely they might differ from his own.

Socially, he was one of the most genial and delightful of men, an agreeable companion upon all occasions, and a warm, true-hearted friend. To the artificial distinctions of society he paid little heed, but he weighed men carefully and correctly, and accepted them at their true value. In his social kingdom every honest man was a peer of the realm.

On the 28th of December, 1872, he was united in marriage with Miss Addie Elizabeth Smith of Wakefield, a lady of culture and refinement, who, surviving him for several years, died in Boston, Mass., in 1894. They left no children to perpetuate the name.

The wasting progress of a mortal but insidious disease blasted the splendid promise of our classmate's life. Through years of failing health and fading hopes, patiently he bore his bitter lot, until, on the 17th of January, 1886, "God's finger touched him" and his wearied soul found rest. Most devoutly do I trust that he "lay down to pleasant dreams."

It is, perhaps, fruitless to dwell on the possibilities of a life so gifted—the sorrow much outweighs the pleasure of it—and besides we have no title to a single pulse beat of the time to come; but the great loving and loyal heart of our dead friend is a vested and an immortal possession. Of this, if we can trust to the inspiration of the poet as an echo from the beyond, not even the icy hand of the Destroyer can rob us, for

"Life is ever lord of death,
And love can never lose its own."

NATHAN CURRIER.

Nathan Currier, lawyer, was born in Enfield, June 22, 1858, and died in Enfield, May 19, 1898.

Mr. Currier was the only child of Albert and Hannah (McDaniel) Currier, his maternal grandparents being James and Hannah (Morse) McDaniel, and his paternal grandparents being Nathan and Nancy (Jones) Currier. He attended the public schools in Enfield during his boyhood, and later the New Hampshire Conference Seminary in Tilton, and Goddard Seminary in Barre, Vermont, being graduated from the latter institution in 1879, whereupon he entered Tufts college from which he was graduated with a degree of A. B. in 1883. During the year immediately succeeding his graduation from college he was private tutor in the family of Hon. Samuel Cabot in Boston, and then for a year's time he was principal of the High school in Mendon, Mass., and during the year 1885-'86 he was principal of the High school in Walpole, N. H. From August, 1886, until the year 1890 he was principal of the Parsonsfield seminary at Parsonsfield, Maine.

Mr. Currier prosecuted his law studies from time to time while connected with these schools as opportunity offered, first with Frank Currier of Canaan, N. H., then with Hon. J. G. Bellows of Walpole, and later with Luther Moore, Esq., of Limerick, Maine, and he was admitted to the bar of York county, Maine, in January, 1888. In 1890 he moved to Boston to enter upon the active practice of law, and opened an office at 209 Washington street, in connection with Wilbur H. Powers, Esq., and afterwards was a member of the law firms of Currier & Haskell, and Cur-

rier, Haskell & Higgins. Mr. Currier was admitted to the bar of Suffolk county, Mass., in June, 1890, and continued in active practice in Boston until his death.

Mr. Currier was a member of Social lodge, F. & A. M., of Enfield; of Dearborn lodge, A. O. U. W., of Boston, and of Franklin lodge, I. O. O. F., of Boston. Though not a church member he was a regular attendant at the Universalist church.

He was a studious and apt scholar as a boy, and until his death he was scholarly of mind, eloquent in address, and ambitious in purpose. A Memorial day address delivered by him in his native town is remembered by his friends and neighbors of Enfield as one of the most eloquent orations ever given there.

Mr. Currier was married July 14, 1886, at Enfield, to Miss Clara M. Smith, daughter of Charles and Narinda (Sinclair) Smith, of Meredith, who thereafter acted as preceptress of the seminary of which her husband was principal during the following four years. They had two daughters Elaine, born February 7, 1891, and Hazel Narinda, born May 14, 1892.

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EIGHTH ANNUAL BANQUET.

EIGHTH ANNUAL BANQUET.

The eighth annual banquet followed at the New Eagle Hotel. Arthur H. Chase was the toastmaster, and Albert S. Batchellor, Edgar Aldrich, Frank S. Streeter, Henry F. Hollis, Patrick H. Sullivan, and Will P. Buckley responded to toasts.

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